

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DELAGE LANDEN FINANCIAL SERVICES, INC.,	:	CIVIL ACTION NO. 2:02CV2810
Plaintiff,	:	
TOSHIBA AMERICA MEDICAL SYSTEMS, INC.	:	HON. RONALD L. BUCKWALTER
Plaintiff/Intervenor,	:	
v.	:	
DESOTO DIAGNOSTIC IMAGING, LLC., RANDON J. CARVEL, LYNN T. CARVEL, DELTA RADIOLOGY, P.C. and ZOBAR PROPERTIES, LLC	:	
Defendants.	:	

ORDER

AND NOW, this _____ day of _____, 2003, upon consideration of the Motion of Plaintiff/Intervenor Toshiba America Medical Systems, Inc. ("TAMS") to Compel Discovery Directed to Defendants and for Expedited Relief, it is hereby ORDERED that Defendants shall file and serve any response to said motion within five (5) business days of service, that is, on or before October 30, 2003.

BY THE COURT:

Ronald L. Buckwalter, U.S.D.J.

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DELADE LANDEN FINANCIAL SERVICES, INC.,	:	CIVIL ACTION NO. 2:02CV2810
Plaintiff,	:	
TOSHIBA AMERICA MEDICAL SYSTEMS, INC.	:	HON. RONALD L. BUCKWALTER
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DESOTO DIAGNOSTIC IMAGING, LLC., RANDON J. CARVEL, LYNN T. CARVEL, DELTA RADIOLOGY, P.C. and ZOBAR PROPERTIES, LLC	:	
Defendants.	:	

ORDER

AND NOW, this _____ day of _____, 2003, upon consideration of the Motion of Plaintiff/Intervenor Toshiba America Medical Systems, Inc. ("TAMS") to Compel Discovery Directed to Defendants and for Expedited Relief, it is hereby ORDERED that said motion be, and the same hereby is, GRANTED and IT IS FURTHER ORDERED that within ten (10) days of the date of this Order Defendants shall:

1. Produce all documents responsive to TAMS' Third Request for Production of Documents; and
2. Produce a privilege log that identifies, in accordance with the Federal Rules of Civil Procedure, all documents responsive to TAMS' First, Second and Third Requests for the Production of Documents that Defendants claim are protected by the attorney-client privilege and/or work product doctrine.

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

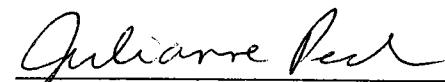
DELAGE LANDEN FINANCIAL SERVICES, INC.,	:	CIVIL ACTION NO. 2:02CV2810
Plaintiff,	:	HON. RONALD L. BUCKWALTER
TOSHIBA AMERICA MEDICAL SYSTEMS, INC.	:	
Plaintiff/Intervenor,	:	
v.	:	
DESOTO DIAGNOSTIC IMAGING, LLC., RANDON J. CARVEL, LYNN T. CARVEL, DELTA RADIOLOGY, P.C. and ZOBAR PROPERTIES, LLC	:	
Defendants.	:	

**TOSHIBA AMERICA MEDICAL SYSTEMS, INC.'S
MOTION TO COMPEL DISCOVERY DIRECTED TO DEFENDANTS AND FOR
EXPEDITED RELIEF**

Plaintiff/Intervenor Toshiba America Medical Systems, Inc. ("TAMS"), by and through its undersigned attorneys, moves this Honorable Court pursuant to Federal Rule of Civil Procedure 37(d) to enter (1) an Order in the form attached hereto requiring an expedited response to this motion and (2) after a response from Defendants, an Order in the form attached hereto compelling Defendants DeSoto Diagnostic Imaging, LLC, Randon J. Carvel, Lynn T. Carvel, Delta Radiology, P.C. and Zobar Properties, LLC to produce documents in response to TAMS' Third Request for Production of Documents, and to produce a Privilege Log properly identifying all documents that have been withheld from production in this action. In support of this Motion, TAMS relies upon the accompanying Memorandum of Law and the Exhibits in support

thereof, which are incorporated herein by reference.

Dated: October 23, 2003



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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DELAGE LANDEN FINANCIAL	:	
SERVICES, INC.,	:	CIVIL ACTION NO. 2:02CV2810
Plaintiff,	:	
TOSHIBA AMERICA MEDICAL	:	HON. RONALD L. BUCKWALTER
SYSTEMS, INC.	:	
Plaintiff/Intervenor,	:	
	:	
v.	:	
DESOTO DIAGNOSTIC IMAGING,	:	
LLC., RANDON J. CARVEL, LYNN T.	:	
CARVEL, DELTA RADIOLOGY, P.C.	:	
and ZOBAR PROPERTIES, LLC	:	
Defendants.	:	

**TOSHIBA AMERICA MEDICAL SYSTEMS, INC.'S
MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION TO COMPEL DISCOVERY DIRECTED TO DEFENDANTS AND FOR
EXPEDITED RELIEF**

I. INTRODUCTION

Plaintiff/Intervenor Toshiba America Medical Systems, Inc. ("TAMS") brings this motion to compel discovery from defendants (collectively referred to herein, for convenience, as "DeSoto") in response to DeSoto's failure to **produce** documents responsive to TAMS' Third Request for Production of Documents. As set forth in TAMS' initial Motion to Compel, filed on October 9, 2003, TAMS has spent months seeking -- and being promised without result -- the production of documents and information responsive to its initial interrogatories and document requests. As the expert disclosure and discovery deadlines (October 29 and November 30, 2003, respectively) approach, DeSoto has carried its refusal to meet its discovery obligations to new levels, refusing even to respond to TAMS' efforts to meet and confer concerning TAMS' Third

Request for Production of Documents. Accordingly, TAMS has filed this motion to compel and for expedited relief, seeking production of the remaining documents it has requested. DeSoto's recalcitrance has already unfairly prejudiced TAMS and, unless the required documents are produced promptly, will have succeeded in impeding TAMS' ability to prepare adequately for trial.

II. FACTUAL BACKGROUND

A. The Lease of the Equipment

As this Court is by now well aware from previous filings, this case arises out of the breach by Defendant DeSoto Diagnostic Imaging, LLC of a lease covering a variety of medical diagnostic imaging equipment. *See Exhibit "A"* (Intervenor Compl. ¶¶ 10). The other defendants, Randon J. and Lynn T. Carvel (DeSoto's principals), and Delta Radiology and Zobar Properties, each executed and delivered Guarantees to secure Desoto's performance under the Lease. *Id.* ¶¶ 11, 12.

DeSoto and the guarantor defendants breached their obligations under the Lease by dismantling and removing the equipment prior to the end of the lease term and by failing and refusing to make payments when due. Intervenor Compl. ¶ 15. In addition, DeSoto has failed to abide by and has breached each of the service agreements. *Id.* ¶ 17. As a result, on May 10, 2002, DLL filed a complaint in this Court seeking damages in excess of \$3,250,000 relating to defendants' breach of contract.

On June 21, 2002, TAMS filed a complaint in intervention seeking a declaratory judgment that defendants have a duty to comply with the terms of the Lease and/or Guarantees and seeking damages relating to DeSoto's breach of the service agreements. On August 15, 2002, defendants filed a counterclaim against TAMS seeking damages from TAMS on the theory

that the equipment failed to "consistently" perform as warranted, and that TAMS failed to adequately maintain and/or service the equipment. Defendants later filed amended affirmative defenses and amended counterclaims on September 22, 2003.

B. Relevant Discovery Proceedings

TAMS served its initial interrogatories and document requests on March 12, 2003. DeSoto's responses and objections are attached hereto as Exhibits "B" and "C." TAMS served its second set of interrogatories and document requests on June 24, 2003. DeSoto's responses and objections are attached hereto as Exhibits "D" and "E." TAMS served its third set of interrogatories and document requests on August 27, 2003. DeSoto's responses and objections are attached hereto as Exhibits "F" and "G."

DeSoto failed to produce the majority of the categories of documents requested, and failed to respond to the majority of TAMS' interrogatories, based primarily on meritless contentions that the discovery was not "relevant" and that TAMS had exceeded the federal limit on interrogatories (due to clarifying subparts). Pursuant to the meet and confer process, DeSoto also made repeated promises to produce additional categories of documents in response to TAMS' first and second requests for production, but those promises were unfulfilled. After further attempts to meet and confer with counsel for DeSoto failed, TAMS filed a motion to compel on October 9, 2003, in regard to its first, second and third sets of interrogatories, and its first and second requests for production of documents. At that time, TAMS did not move on its Third Request for the Production of Documents because it had not had an opportunity to comply fully with its obligation to meet and confer with DeSoto's counsel.

DeSoto has objected to the majority of the 37 requests in TAMS' third set of document requests. In response to some requests, DeSoto has claimed that it has already produced

“responsive documents” although (1) DeSoto does not claim that it has produced *all* responsive documents and (2) in many cases it is clear that DeSoto has not, in fact, produced *all* responsive documents, or even all categories of responsive documents. In response to other requests, DeSoto repeated its frequently made, but usually unfulfilled, promise to produce documents at some point.

By letter dated October 10, 2003 (attached hereto as Exhibit “H”), TAMS set forth in detail the deficiencies in DeSoto’s responses and asked that DeSoto, in view of the impending expert disclosure and discovery deadlines,¹ agree to promptly produce the promised documents, as well as those documents as to whose production it had made meritless objections, and that DeSoto produce a complete privilege log. TAMS also asked DeSoto to contact TAMS in the event that it was willing to meet and confer further on these issues. TAMS’ letter and invitation were ignored. Accordingly, by letter dated October 17, 2003 (attached hereto as Exhibit “J”), TAMS repeated its request that DeSoto comply with its discovery obligations promptly in view of the impending deadlines and informed DeSoto that unless it received a response by October 21, 2003, it would file a motion seeking expedited disposition and production of the responsive documents. This letter, too, was ignored. By e-mail dated October 20, 2003, TAMS re-confirmed that it would be required to file the instant motion unless DeSoto would fulfill its obligation to provide discovery in good faith. DeSoto did not ignore this communication, although it *did* continue to sidestep the discovery issues. In response to TAMS’ counsel’s e-mail, Mr. Tate, counsel for DeSoto sought to further DeSoto’s attempt to conceal and withhold important information by ignoring the discovery issues entirely and informing counsel for TAMS that he would no longer communicate with her on this case! Exhibit “K.”

¹ The expert disclosure deadline is October 29, 2003 and the close of discovery is November 30, 2003. Exhibit “I”.

III. ARGUMENT

Where a party fails to produce documents in response to a request for the production of documents under Federal Rule of Civil Procedure 34, a motion to compel discovery is appropriate. *See* Fed. R. Civ. P. 37(2)(B). Furthermore, evasive and/or incomplete answers to a discovery request constitute a failure to respond, *see* Fed. R. Civ. P. 37(3), and, if the motion is granted, or if the requested discovery is provided after the motion is filed, the moving party is entitled to reasonable expenses incurred in making the motion, including attorneys' fees. *See* Fed. R. Civ. P. 37(4).

A. DeSoto's Bald Assertion that TAMS' Requests are Not Relevant is Frivolous.

DeSoto objected to the majority of TAMS Third Request for Production on the ground that the documents sought are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. This "objection" is completely without foundation and frivolous. It is now clear that it has been made as part of DeSoto's ongoing attempt to conceal highly relevant discovery, at times by objecting to production and at times by proffering, but never actually making, production.

1. TAMS is entitled to all Documents that Reflect the Use (or anticipated use) of the Equipment (Requests Nos. 1, 2, 25, 26, and 27)

The captioned requests seek documents that relate to the use of the Toshiba equipment that is the subject matter of this dispute. For example, TAMS has requested: *all* patient records relating to DeSoto's use of the equipment (Request No. 1), including without limitation all documents that reflect the procedures that were ordered by referring physicians and *all* billing records relating to procedures performed by the equipment. (Request No. 2); DeSoto's annual financial information for the time period that the equipment was installed (Request No. 25); the bills, charges and invoices sent to private or third-party payers for the professional services

rendered by Lynn T. Carvel, PLLC (*i.e.* the interpretation of the images produced by the equipment) (Request No. 26); and all documents that reflect payments from Lynn T. Carvel, PLLC to defendants. (Request No. 27).

While DeSoto has -- very tardily -- produced degraded versions of the images taken by the equipment, as well as *some* billing records that reflect the actual procedures performed, it has flatly refused to produce many of the records that TAMS needs to explore its claims and defenses in this case. For example, DeSoto has refused to produce: the referring physician requisition forms (*i.e.* the documents that reflect what procedures were actually *ordered* by the referring physicians as opposed to performed by DeSoto); the radiologist's dictation reports (or equivalent documents) of Dr. Carvel or her collaborators that would reflect the purported basis for any differences between the procedures that referring physicians requested and that DeSoto actually performed (as well as the basis for the charges to third-party payors for the procedures performed); and the claim forms submitted to third-party payors and/or patients for the services performed. All of these records are highly relevant for multiple reasons.

First, DeSoto contends that the equipment did not perform as warranted, resulting in Dr. Carvel's being unable, at times, to complete requested procedures. Carvel Dep., Sept. 9, 2003, at 158-166 (Exhibit "L."). Cr. Carvel was entirely unable, however, to support this contention with any estimate as to the number of instances in which this allegedly occurred, the names of the patients allegedly affected, or even the kinds of scans that were being performed when these problems allegedly occurred. *Id.* at 161, 166. Obviously, TAMS is entitled to *all* documents (including those described above) that will demonstrate the extent to which requested procedures were or were not successfully performed. Obviously, the degree to which the equipment in fact produced diagnostic images -- that is, produced images that Dr. Carvel used to make diagnoses

and billed for -- is centrally relevant to the question of whether the equipment operated properly. The extent to which Defendants were in fact able to perform all necessary procedures and to bill for them, thus profiting from the Toshiba equipment, is obviously "relevant" to the question of whether that equipment failed to meet its essential purpose as Defendants claim. TAMS has a right to review *all* documents (not just those selected documents that DeSoto has, for whatever reason, chosen to produce) that bear on the efficiency of the equipment and the profits it generated.

Second, these documents -- and particularly the referring physician requisitions, the radiologist dictation reports, and any claims sent to third-party payors, including Medicare -- are central to the issue of whether Defendants regularly over-billed for the services performed at DeSoto. The issue of whether DeSoto's practice includes regular over-billing is crucially relevant to a number of issues in this case. Most obviously, it bears on Defendants' claims for damages. To the extent TAMS is able to show that Defendants' "profits" are in fact the result of revenues to which DeSoto was not lawfully entitled -- whether because of over-billing for appropriate procedures or billing for inappropriate and unnecessary procedures -- the loss of such "profits" cannot constitute legally cognizable damages any more than could the loss of an opportunity to rob a bank.

This issue is also highly relevant to at least two other important issues in the case. One is the credibility of Defendants' main (and in many areas only) witness, Dr. Carvel, who has testified under oath that DeSoto *did not* over bill or perform unnecessary procedures and that its financial performance as reflected in its financial records is, therefore, pristine. Another is Dr. Carvel's claim that DeSoto's "damages" include the loss of qualified radiological technologists due to their dissatisfaction with the equipment and the consequent need to train replacement

technologists. TAMS contends that many technologists left DeSoto not because they had any problem with the Toshiba equipment, but because they became concerned about precisely the practices that Dr. Carvel claims did not take place. It is, perhaps, a fair inference that DeSoto, if it had nothing to hide, would not be so determined to withhold such obviously relevant documents. More importantly, however, it is clear that these documents are not only likely to lead to the discovery of admissible evidence, but are likely to have evidential value in and of themselves. Given the impending deadlines, the *immediate* production of these documents is critical.

2. TAMS is Entitled to Documents Relating to the Replacement Equipment (Request Nos. 8(b)(c)(d), 10-12, 18-20)

After using the Toshiba equipment to start up a very profitable business, Defendants unilaterally de-installed it and replaced each modality with other makes and models. TAMS seeks, with regard to the replacement equipment, documents relating to: the financing by DeSoto to lease or purchase the equipment; the installation of the equipment; communications with third-parties, including Siemen's, Miller Medical Imaging and Medical Equipment Consulting Services, regarding the equipment; billing records reflecting the use of such equipment; complaints by DeSoto with regard to the equipment; services required on the equipment; and fees due by DeSoto relating to the equipment.

Despite DeSoto's failure and refusal to provide it, this information is also centrally relevant to this lawsuit. DeSoto contends, among other things, that: (1) it required "top of the line" and "state of the art" equipment to compete with its competitors; (2) Toshiba knew this and represented that the leased equipment was "top of the line" and "state of the art"; (3) the Toshiba equipment was not in fact "top of the line" or "state of the art"; and (4) that the equipment with

which DeSoto replaced the Toshiba equipment is in all respects adequate to meet DeSoto's needs.

In these circumstances, documentation relating to the replacement equipment -- which is, according to DeSoto, adequate to DeSoto's needs -- is clearly relevant. The nature, cost and performance of the replacement equipment bears *directly* on at least the following issues: (1) whether DeSoto in fact requires "state of the art" or "top of the line" equipment; (2) whether, if it does not, DeSoto's claim that Toshiba "knew" that it did is credible or unworthy of belief; and (3) whether the *concededly adequately performing* replacement equipment performs appreciably better, or worse, than the Toshiba equipment that DeSoto seeks to malign in this case. Such information as whether the replacement equipment is new or used, what its specifications (performance limitations) are, what DeSoto paid for it, what procedures it has and has not proved able to perform, the number and nature of service calls experienced with regard to it, etc., is all directly relevant to these issues.

To provide one specific example: Dr. Carvel claims that, when she was selecting a Nuclear Medicine (or Gamma) Camera, she made it clear to TAMS that she wanted to "do hearts in fifteen minutes", something that only a variable dual head camera could do. In fact, DeSoto leased a *fixed* dual head, 7200 Series Nuclear Camera. Dr. Carvel claims that she did not know that she was leasing only a fixed dual head camera when she leased it. When DeSoto replaced the Toshiba Nuclear Camera, however, it bought a *single* head camera with significantly less functionality than the Toshiba camera it replaced. It is undisputed that this replacement camera will not "do hearts in fifteen minutes" and it is not "top of the line" or "state of the art". This, TAMS submits, bears directly on both (1) the question of whether the Toshiba camera could adequately perform *needed* functions at DeSoto and (2) the credibility of Dr. Carvel's claim that,

as to all of the equipment, the parties' written agreements should be disregarded because she relied exclusively upon alleged oral representations by TAMS representatives.

In addition, some of the requested materials will help to establish such things as when DeSoto *really* made the decision to de-install the Toshiba equipment (since there is ordinarily a fairly long lead time between order and delivery and installation for this kind of equipment) and whether the replacement equipment cost less than the Toshiba equipment (which might support TAMS' position that lowering, by evading lawfully incurred, cost was DeSoto's ulterior motive for the de-installation of the Toshiba equipment). In short, the requested information is, once again, centrally relevant to the issues in this case and DeSoto's efforts to prevent it from seeing the light of day are entirely sham.

3. TAMS Is Also Entitled To The Remaining Documents Requested

There are also a number of other, miscellaneous document requests in response to which DeSoto has failed to make production and as to which production should be ordered. Specifically:

Request No. 16: This request seeks correspondence and communications between DeSoto and third parties relating to the medical equipment. DeSoto objects to the relevancy of this request and states that it needs to be stated with greater particularity. There is no basis for either objection. It obviously includes all invoices and bills relating to use of the medical equipment, all communications with physicians relating to the medical equipment or its functioning, any filings with the State of Mississippi that refer to the medical equipment, any communications with third parties relating to the de-installation or removal of the medical equipment, and any other communications with third parties relating or referring to the medical equipment. All such communications are relevant and should be produced.

Request No. 22: This request seeks documents evidencing DeSoto's billing policies and procedures, which are necessary for the purpose of determining whether DeSoto was operating pursuant to proper procedures or was following its own nominally applicable procedures to the extent they were proper.

Request Nos. 28: This request seeks information relating to the AGFA PACS system purchased/leased by DeSoto for use with the Toshiba equipment. Dr. Carvel has complained at length regarding the performance of AGFA PACS, has sought to blame what she claims is the poor performance of these systems on TAMS and has claimed that it formed part of the basis for her decision to de-install the equipment. Thus, any and all records relating to the AGFA PACS system and, in particular, any communications DeSoto had with AGFA or Talk Tech (a company believed to be affiliated with AGFA) regarding the PACS system, the Talk Tech System or any interface between those systems is highly relevant at least to the following questions: (1) was any particular claimed "problem" in fact a system malfunction, as opposed to being simply a system feature that Dr. Carvel did not like; (2) are DeSoto's efforts to hold TAMS responsible for alleged problems with AGFA's products fairly supportable; and (3) with regard to the alleged issues, did DeSoto raise them with AGFA or Talk Tech rather than TAMS and, if so, when did it do so, did AGFA take "ownership" of the alleged problems, were these issues resolved and, if so, when were they resolved.

Request No. 29: This request seeks information relating to the RIS system. Dr. Carvel testified that the radiology information system ("RIS") stores patient name and information, and serves as an online patient appointment file. Carvel Dep., July 21, 2003, at 231-233. To the extent that it stores information relating to procedures performed (or scheduled to be performed) on the Toshiba equipment it is clearly relevant and should be produced.

Request No. 30: seeks documents that relate to any way in which the RIS system affected the performance of the Medical equipment. In its initial response to this request, DeSoto purported not to understand this request. This response was less than candid and, in its October 10, 2003 letter, TAMS pointed out that Dr. Carvel (at page 53 of her July 21, 2003 deposition) had *testified* that there was a problem relating to the RIS system, specifically a problem in transferring accession numbers as produced by the RIS system between the modalities (*i.e.* the Toshiba equipment) and the AGFA PACS system via HL-7. Dr. Carvel also added that there were also other issues that were “not popping into her head” at the moment she was being deposed. Between Requests Nos. 28 and 30, TAMS sought, among other things, to obtain all documents relating to ways in which the RIS system and/or the AGFA PACS system affected the performance of the Toshiba equipment.

Request No. 31: This request seeks documents in defendants’ possession, custody or control that relate to methods of operating the Toshiba equipment. Given DeSoto’s claims that it experienced trouble operating the equipment, this information is obviously relevant. It is no response to say, as DeSoto has said, that responsive information may be in TAMS’ possession. Even if TAMS does have materials relating to the operation of the equipment, that does not absolve DeSoto from producing what *it* has. This is particularly significant in that it appears that DeSoto may not have employed TAMS operating manuals but, instead, an unofficial “manual” created by a DeSoto part-time technologist and consultant, Mr. James Smith. Vokaty Dep. at 107 (Exhibit “M”). DeSoto’s failure and refusal to produce this unofficial “manual” is particularly significant in view of TAMS’ contention that many of DeSoto’s “problems” resulted from the fact that Dr. Carvel was unwilling to make the investment necessary to train many of

DeSoto's replacement technologists (who were, no doubt, perfectly competent in their fields) so as to allow them to optimize the performance of the Toshiba equipment.

Request No. 32: This request seeks documents relating to any tests or procedures run by Desoto (such as "floods", Quality Assurance checks or tests, uniformity tests or checks or checks and other tests employing phantoms) to ensure that the Toshiba equipment was properly set up and in proper condition to perform procedures. This request is stated with more than sufficient particularity. It is directly addressed to the question of whether DeSoto had internal procedures that it would have been required to have in order to operate in accordance with good practice. Specifically, the request seeks the results of regular, in many cases daily, tests that DeSoto performed (or *should* have performed) to ensure that the equipment was properly calibrated, tuned, etc. prior to being used to generate images. DeSoto's contention that the request is "incomprehensible" is not only meritless, it is blatant bad faith. Given that DeSoto claims that this lawsuit is largely about whether the equipment functioned properly, DeSoto's claim that this request is *not relevant* is equally egregious.

Request No. 34: This request seeks documents relating to any generally accepted standards used by radiologists regarding image quality. DeSoto contends -- again in bad faith -- that this request calls for privileged documents and for expert testimony. The contention that the request seeks "privileged documents" is interposed in bad faith because (a) the request is addressed to generally accepted standards and (b) DeSoto has not produced a log identifying any documents as being withheld on the grounds of privilege. The contention that the request seeks an "expert opinion" is equally frivolous. The request seeks no such thing. Rather, it seeks the production of any documents in DeSoto's possession, custody or control that refer or relate to standards used by radiologists to determine the acceptability, from a quality standpoint, of

radiological images. If DeSoto has such documents other than opinions of its experts, it is obliged to produce them. If it does not, it is obliged to admit that.

Request No. 3: This request seeks the personnel files of all DeSoto employees.

These files will reveal the identities and positions held of all physicians, administrative assistants, billing personnel, etc. who may have information relevant to this dispute. Obviously, these persons are likely to have significant knowledge about DeSoto's practices that might bear significantly on the issues in this action.

B. DeSoto Is Obliged to Produce a Privilege Log

DeSoto has objected to the production of various documents and information on the ground of attorney-client privilege or work product. *See, e.g.*, Defendants' Responses to TAMS' First Request for Production of Documents Nos. 2 and 18; Defendants' Responses to TAMS' Second Request for Production of Documents No. 4; and Defendants' Responses to TAMS' Third Request for Production of Documents Nos. 21, 23, 34 and 37. Despite this, DeSoto has failed to provide a privilege log that identifies *even one single document* as having been withheld on grounds of the attorney-client privilege or work product doctrine. Instead, DeSoto has produced a list reflecting redactions from documents none of which are allegedly subject to either privilege. Given that DeSoto claims to have withheld documents on the ground of attorney-client privilege or the work product doctrine, its failure to identify those documents is highly inappropriate.

"A claim of privilege must specify for what documents the privilege is being claimed as well as 'precise and certain' reasons for non-disclosure of the documents." *General Refractories Co. v. Liberty Mutual Ins. Co.*, No. 97-7494, 1999 U.S. Dist. LEXIS 6524, at *4-5 (E.D. Pa. May

6, 1999) (citing *United States v. O'Neill*, 619 F.2d 222, 226 (3d Cir. 1980)). In addition, Federal Rule of Civil Procedure 26(b)(5) provides, in relevant part:

When a party withholds information otherwise discoverable under these rules by claiming that it is privileged . . . the party shall make the claim expressly and shall describe the nature of the documents . . . not produced . . . in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

Here, the “log” that DeSoto has produced does not identify the allegedly applicable “privilege” that has resulted in redactions and, in addition, does not identify any of the documents that DeSoto has withheld on the basis of attorney-client privilege or work product. DeSoto must, therefore, be compelled to produce a privilege log that is sufficiently detailed to allow an informed evaluation of their claims of privilege.

C. DeSoto’s Inexcusable Delay and Refusal to Produce Relevant Documents is Prejudicial to TAMS

The result of DeSoto’s refusal to participate in good faith in the discovery process has led to considerable prejudice and hardship to TAMS. As discussed above, expert disclosures are due October 29, 2003, and DeSoto has failed to produce entire categories of documents that require expert review and analysis. Moreover, as expressed in TAMS’ initial motion to compel, the discovery deadline of November 30, 2003 is looming, and TAMS has had to continue to prepare its case without critical documents, including taking the 30(b)(6) deposition of Desoto, as well as the individual depositions of Dr. Carvel and Randon Carvel.

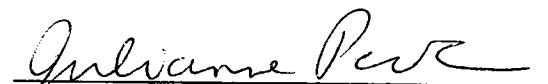
DeSoto is deliberately withholding the information requested above. Moreover, while repeating its repeatedly unfulfilled promise to produce documents responsive to Requests Nos. 4, 5, 6, 7, 8(a)(iii), 14, 15, 23, 24 and 37, DeSoto has declined to state when such documents will be produced. Indeed, Mr. Tate has improperly refused even to communicate with TAMS’

designated counsel on that issue. TAMS has attempted in good-faith to work out these discovery issues with DeSoto and has tried to accommodate DeSoto's pleas that, as a small organization, it needs more time to fulfill this or that task. At this point, it is apparent that TAMS' good faith has been grossly abused and that, without Court intervention, DeSoto will not produce all documents and information responsive to TAMS' discovery requests before the applicable deadlines. Consequently, in order to prevent any additional prejudice to TAMS, TAMS respectfully requests that this Court grant its motion to compel.

IV. CONCLUSION

For the foregoing reasons, TAMS respectfully requests that this Honorable Court enter an Order in the form attached hereto, compelling Defendants DeSoto Diagnostic Imaging, LLC, Randon J. Carvel, Lynn T. Carvel, Delta Radiology, P.C. and Zobar Properties, LLC to provide answers and documents in response to TAMS' Third Request for Production of Documents, to produce a complete and adequate privilege log, and for sanctions in an amount equal to the cost of bringing this motion.

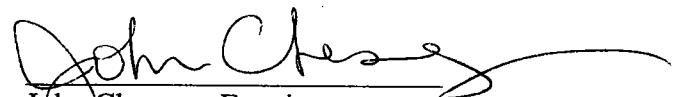
Dated: October 23, 2003


 John Chesney (Attorney I.D. No. 24458)
 Julianne Peck (Attorney I.D. No. 79966)
 Jonathan Sturz (Attorney I.D. No. 88153)
 DRINKER BIDDLE & REATH LLP
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 18th & Cherry Streets
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 Attorneys for Plaintiff/Intervenor
 Toshiba America Medical Systems, Inc.

CERTIFICATION OF COUNSEL

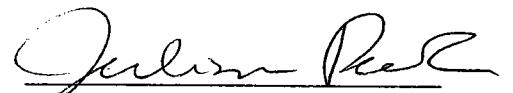
Pursuant to Local Rule 26.1(f), we hereby certify that John Chesney, Esquire and Julianne Peck, Esquire of this office have conferred with Kyle P. Tate, Esquire, counsel for the Defendants in this matter, in a good faith effort to resolve by agreement the issues raised by the motion without intervention by the Court. Unfortunately, the parties have been unable to resolve these issues through informal means. The issues which remain unresolved are discussed in the Memorandum of Law submitted herewith.

Dated: October 23, 2003



John Chesney, Esquire
DRINKER BIDDLE & REATH, LLP

Dated: October 23, 2003



Julianne Peck, Esquire
DRINKER BIDDLE & REATH, LLP

Attorneys for Plaintiff/Intervenor
Toshiba America Medical Systems, Inc.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that today I caused a true and correct copy of **Toshiba American Medical Systems, Inc.'s Motion To Compel Discovery Directed To Defendants and for Expedited Relief** and the Exhibits thereto to be served upon counsel of record for all of the other parties to this proceeding as follows:

(Via Facsimile and Federal Express)

Kyle P. Tate, Esquire
9085 Sandidge Center Cove
Olive Branch, Mississippi 38654

(Via Hand Delivery)

Rosetta B. Packer, Esquire
MCCARTER & ENGLISH
Mellon Bank Center, Suite 700
1735 Market Street
Philadelphia, PA 19103-7501

William Matthews, Esquire
SAUL EWING LLP
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102

Dated: October 23, 2003



Julianne Peck

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DELAGE LANDEN FINANCIAL SERVICES, INC.,	:	
Plaintiff,	:	
TOSHIBA AMERICA MEDICAL SYSTEMS, INC.	:	CIVIL ACTION NO. 2:02CV2810
Plaintiff/Intervenor,	:	HON. RONALD J. BUCKWALTER
v.	:	
DESOTO DIAGNOSTIC IMAGING, LLC., RANDON J. CARVEL, LYNN T. CARVEL, DELTA RADIOLOGY, P.C. and ZOBAR PROPERTIES, LLC	:	
Defendants.	:	

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**Exhibits in Support of Toshiba America Medical Systems, Inc.'s
Motion to Compel Discovery and Expedited Relief Directed to Defendants**

Exhibit A.....Complaint of Intervenor, served June 21, 2002.

Exhibit B.....Defendants' Response to TAMS First Set of Interrogatories, served April 14, 2003.

Defendants' Supplemental Response to First Set of Interrogatories, served August 21, 2003.

Defendants' Amended Supplemental Response to First Set of Interrogatories, served September 15, 2003.

Defendants' Second Supplemental Response to First Set of Interrogatories, served October 2, 2003.

Exhibit C.....Defendants' Response to TAMS First Request for Production of Documents, served April 14, 2003.

Defendants' First Supplemental Response to First Request for Production of Documents, served October 2, 2003.

Exhibit D Defendants' Objection to TAMS' Second Set of Interrogatories, served October 2, 2003.

Exhibit E Defendants' Response to TAMS' Second Request for Production of Documents, served July 23, 2003.

Defendants' First Supplemental Response to Second Request for Production of Documents, served October 2, 2003.

Exhibit F Defendants' Response to TAMS Third Set of Interrogatories, served September 30, 2003.

Exhibit G Defendants' Response to TAMS Third Request for Production of Documents, served September 30, 2003.

Exhibit H Letter from J. Peck to K. Tate, dated October 10, 2003.

Exhibit I Stipulation and Order.

Exhibit J Letter from J. Peck to K. Tate, dated October 17, 2003.

Exhibit K October 20 and 21, 2003 e-mail exchange between J. Peck and K. Tate.

Exhibit L Portions of (30)(b)(6) Deposition of Lynn T. Carvel dated July 21, 2003 at 53, 231-233 and September 9, 2003 at 158-166.

Exhibit M Portion of May Vokaty Deposition dated August 12, 2003 at 107.

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DELAGE LANDEN FINANCIAL
SERVICES, INC.,

Plaintiff,

TOSHIBA AMERICA MEDICAL
SYSTEMS, INC.

Plaintiff/Intervenor,

v.

DESOTO DIAGNOSTIC IMAGING,
LLC., RANDON J. CARVEL, LYNN T.
CARVEL, DELTA RADIOLOGY, P.C.
and ZOBAR PROPERTIES, LLC.

Defendants.

CIVIL ACTION NO. 2:02CV2810

HON. RONALD J. BUCKWALTER

FILED JUN 21 2002

COMPLAINT OF INTERVENOR

Plaintiff/Intervenor Toshiba America Medical Systems, Inc., by and through its undersigned attorneys, brings this action for damages and for declaratory relief against defendants, and in support of its claims avers as follows:

PARTIES

1. Plaintiff/Intervenor, Toshiba America Medical Systems, Inc. ("TAMS"), is a corporation, organized and existing under the laws of the State of California, with its principle place of business located in Tustin, California.
2. Upon information and believe, the original Plaintiff in this action, De Lage Landen Financial Services, Inc. ("DLL"), is a corporation, organized and existing under the laws of the State of Michigan, with a place of business at 1111 Old Eagle School Road, Wayne, Pennsylvania, 19087.

3. Defendant, DeSoto Diagnostic Imaging, LLC ("Desoto") is a limited liability company organized under the laws of the State of Mississippi, with a place of business at 9085 Sandridge Center Cove, Olive Branch, Mississippi, 38654.

4. Defendant, Randon J. Carvel is an adult individual who is a citizen and resident of the State of Mississippi with a place of residence at 2464 Monroe Avenue, Memphis, Tennessee 38112.

5. Defendant, Lynn T. Carvel is an adult individual who is a citizen and resident of the State of Mississippi with a place of residence at 2464 Monroe Avenue, Memphis, Tennessee 38112.

6. Defendant, Delta Radiology, P.C. ("Delta") is a professional corporation organized and existing under the laws of the State of Mississippi with a place of business at 5948 Lake tide Cove, Memphis, Tennessee 38120.

7. Defendant Zobar Properties, LLC ("Zobar") is a limited liability company organized and existing under the laws of the State of Mississippi with a place of business at 9085 Sandridge Center Cove, Olive Branch, Mississippi 38654.

JURISDICTION

8. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(a) because the matter in controversy exceeds \$75,000, exclusive of interest and costs, and is between citizens of different states.

9. Personal jurisdiction and venue are appropriate in this District because, among other reasons, the defendants each executed documents (described infra and attached hereto as Exhibits) consenting to the jurisdiction of this Court.

FACTS

10. On or about February 17, 2000, defendant Desoto executed and delivered to Toshiba America Medical Credit, a program of TAMS, a Master Lease Agreement and related attachments (collectively, the "Master Lease"), whereby Desoto leased from TAMS certain equipment more fully described therein. A true and correct copy of the Master Lease is attached hereto as **Exhibit "A."**

11. In order to secure the obligations of Desoto to TAMS under the Master Lease, defendants Randon J. Carvel and Lynn T. Carvel each executed and delivered to TAMS their respective Blanket Personal Guarantees, true and correct copies of which are attached hereto as **Exhibits "B" and "C"** respectively.

12. In order to secure the obligations of Desoto to TAMS, defendants Delta Radiology, P.C. and Zobar Properties, LLC each executed and delivered to TAMS their respective Guarantees, true and correct copies of which are attached hereto as **Exhibits "D" and "E"** respectively.

13. Pursuant to a Master Financing Program Agreement entered into between TAMS and Tokai Financial Services, Inc. (whose rights were subsequently assigned to Plaintiff DLL) TAMS assigned to DLL all of its right, title and interest in and to the Master Lease and the guarantees. A true and correct copy of the Master Financing Program Agreement is attached hereto as **Exhibit "F."**

14. Pursuant to the Master Financing Program Agreement TAMS agreed to continue to provide maintenance and services for the equipment leased to Desoto and, in fact, TAMS and Desoto entered into a separate service agreement for each piece of equipment leased.

15. Desoto is in default of the terms and conditions of the Master Lease because it has, inter alia, failed and refused to timely make payments when due and has dismantled and removed the equipment described in the Master Lease prior to the end of the lease term.

16. Desoto is also in default of the terms of the services agreements it entered into with TAMS in that it has failed and refused to pay for services rendered to date.

17. In addition, Desoto has failed to abide by and has breached the following provision of each of the service agreements:

Customer may not terminate this Agreement before its expiration unless Toshiba substantially fails to perform any of its material obligations specified in this Agreement, provided, however, that before such termination, customer must notify Toshiba in writing of the breach and of its intent to terminate this Agreement if such breach is not corrected within thirty (30) days from Toshiba's receipt of the notice of breach. If Customer elects to terminate this Agreement before its expiration for any reason other than Toshiba's breach, Toshiba reserves the right, in its sole discretion to allow Customer to terminate the Agreement provided Customer pays Toshiba as liquidated damages, an amount equal to 25% of the total service amounts payable under this Agreement for the term remaining as of the date of termination.

COUNT I

(Declaratory Judgment – All Defendants)

18. TAMS repeats and incorporates herein by referencing the preceding paragraphs of the complaint as fully as if the same were set forth at length herein.

19. Desoto had a duty to comply with the terms and conditions of the Master Lease and to timely make payments to DLL under the terms set forth therein.

20. Desoto has breached its duty to DLL by failing to make timely payments to DLL under the Master Lease, and, as a result, owes DLL a sum in excess of \$3,250,000.00 representing the balance due under the Master Lease and other charges due thereunder including, but not limited to, taxes, residual amounts due, attorneys' fees and late charges.

21. Defendants, Randon J. Carvel, Lynn T. Carvel, Delta Radiology, P.C. and Zobar Properties, LLC were guarantors of the Master Lease obligations of Desoto to DLL pursuant to the Guarantees attached hereto as Exhibits "B" through "E," and as such, had and have a duty to comply with the terms of the Guarantees.

22. The guarantor defendants are indebted, jointly and severally, to DLL in an amount in excess of \$3,250,000.00 representing the sums due and owing from Desoto to DLL.

23. If DLL does not recover the amounts owed to it by Desoto and/or the guarantor defendants, or independently, DLL may assert claims against TAMS under the Master Contract Financing Program Agreement for such damages as DLL may sustain as a result of the breaches of Desoto and/or the guarantor defendants. Under the Master Contract Financing Program Agreement, in the event the Defendants default in their payment obligations to DLL under the Master Lease, TAMS is obligated to pay DLL a recourse amount of \$375,000.

WHEREFORE, TAMS requests that this Court enter a Declaratory Judgment in its favor and against the Defendants, and each of them, to the effect that:

- a. Desoto is obliged to make payment to DLL in accordance with the terms of the Master Lease;
- b. The remaining Defendants, and each of them, is obligated to make payment to DLL if Desoto fails to do so in accordance with the guarantees that they signed;
- c. In entering into contractual agreements with DLL, TAMS justifiably relied upon the fact that Desoto and the guarantor defendants would honor their obligations under the Master Lease and the guarantees and, accordingly;
- d. Desoto, the guarantor defendants, and each of them jointly and severally, are obliged to indemnify and hold TAMS harmless of and from any liability to DLL to which TAMS may prove liable as a result of Defendants' breaches of their obligations under the Master Lease and the guarantees.
- e. The Defendants, and each of them jointly and severally, are obliged to pay TAMS the costs of this action.

COUNT II

(Breach Of Contract as to Desoto)

24. TAMS repeats and incorporates herein by reference the preceding paragraphs of this Complaint as fully as if the same were set forth at length herein.
25. Desoto has a duty to comply with the terms and conditions of its services agreements with TAMS.
26. Desoto has breached and repudiated its duty to TAMS by failing to make timely payments under the service agreements.

27. Desoto has also improperly terminated the service agreements prior to their term.
28. As a result of Desoto's failure to make timely payments under the service agreements and unlawful termination of said agreements, TAMS has been damaged.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in its favor and against Desoto in the following particulars:

- a. In an amount for unpaid services currently in excess of \$75,000 and that TAMS believes, and therefore avers, will increase prior to trial as a result of Desoto's ongoing failure and refusal to pay for services, together with interest;
- b. For liquidated damages in an amount equal to 25% of the total service amounts payable under the services agreements for the term remaining as of the date of Desoto's unlawful termination, together with interest;
- c. For TAMS's costs of this action, including reasonable attorney's fees.

COUNT III

(Unjust Enrichment and Quantum Meruit as to Desoto)

29. TAMS repeats and incorporates herein by reference the preceding paragraphs of this Complaint as fully as if the same were set forth at length herein.

30. Desoto accepted and received the benefits of the maintenance and services provided by TAMS for the leased equipment. Desoto knew, or should have known, that TAMS expected and was entitled to be compensated for performing these services.

31. TAMS is entitled to recover from Desoto under the doctrines of quantum meruit and/or unjust enrichment in an amount of the reasonable value of the performance of these services.

WHEREFORE, Plaintiff demands judgment against Desoto for an amount in excess of \$75,000 representing the value of its services, plus interest and attorneys' fees.

DRINKER BIDDLE & REATH LLP

Dated: June 21, 2002

By:


John Chesney (Attorney I.D. No. 24458)
Julianne Peck (Attorney I.D. No. 79966)
DRINKER BIDDLE & REATH LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103-6996
(215) 988-2700

Attorneys for Plaintiff

Exhibit B

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DELAGE LANDEN FINANCIAL SERVICES, INC.,	:	
Plaintiff,	:	CIVIL ACTION NO. 2:02CV2810
TOSHIBA AMERICA MEDICAL SYSTEMS, INC.	:	HON. RONALD J. BUCKWALTER
Plaintiff/Intervenor,	:	
v.	:	
DESOTO DIAGNOSTIC IMAGING, LLC, RANDON J. CARVEL, LYNN T. CARVEL, DELTA RADIOLOGY, P.C. and ZOBAR PROPERTIES, LLC	:	
Defendants and Counter- Claimants	:	

**RESPONSE TO FIRST SET OF INTERROGATORIES
PROPOUNDED BY TOSHIBA AMERICA MEDICAL SYSTEMS, INC.**

NOW COME the Defendants, Desoto Diagnostic Imaging, LLC, Randon J. Carvel, Lynn T. Carvel, Delta Radiology, P.C. and Zobar Properties, LLC, by and through their attorneys, TATE, RAY & BRADY, by Kyle P. Tate, and for their Response to First Set of Interrogatories Propounded by Toshiba America Medical Systems, Inc. do hereby state and answer:

GENERAL OBJECTIONS

1. Defendants object to Plaintiff/Intervenor's instructions and definitions to the extent that they suggest or require any burdens, responsibilities, or objections beyond those set forth in or required by the Federal Rules of Civil Procedure. In responding to these requests, Defendants will comply with the applicable provisions of the Federal Rules of Civil Procedure.

*Defendants' Response to
Toshiba America Medical Systems, Inc.'s
First Set of Interrogatories*

2. Defendants object to any discovery directed at information protected by the attorney work product doctrine, the attorney-client privilege or any other applicable privilege. Defendants further object to any discovery which seeks information that is private, confidential business or commercial information, trade secrets, confidential research or development or proprietary information.

3. Defendants object to discovery which is not relevant or material and which is not reasonable calculated to lead to the discovery of proprietary information.

4. Defendants object to discovery which is unduly burdensome, overly broad, vague and/or ambiguous, and not subject to reasonable limitation in time. Defendants further object to discovery which does not permit the identification of particular documents, subjects and time-frames with sufficient particularity to permit a reasonable response.

**5. DEFENDANTS OBJECT TO DISCOVERY BEYOND THAT WHICH IS
ALLOWED BY RULE 33 OF THE FEDERAL RULES OF CIVIL PROCEDURE
WHICH LIMITS WRITTEN INTERROGATORIES TO 25 IN NUMBER, INCLUDING
ALL DISCRETE SUBPARTS.**

6. Each of these general objections is incorporated into each and every response as though fully set forth at length therein, in addition to any specific objections stated.

7. Defendants reserve the right to supplement their answers.

*Defendants' Response to
Toshiba America Medical Systems, Inc.'s
First Set of Interrogatories*

ANSWERS TO INTERROGATORIES

1. Please identify all of the technicians or other persons employed by you who operated any of the Medical Equipment at Desoto at any time during which such equipment was located at Desoto. For each person identified, please provide the following information:

- a. The name of each such person;
- b. The dates of employment for each such person;
- c. The Medical Equipment each such person operated in the scope of his or her employment;
- d. Whether or not the person is still employed by you; and
- e. The last known address and telephone number for each such person who is no longer employed by you.

Response: Defendants object to this Interrogatory on the grounds that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Further, Defendants object to this Interrogatory to the extent that it seeks confidential, private, business or commercial information and proprietary information. Without waiving these objections, Defendants state that the following persons, during the course of their employment at DDI, may have operated Medical Equipment as set forth below:

Employee Name:	Holly Clark
Dates of Employment:	2/25/2002 – 5/6/2002
Equipment Operated:	Toshiba R&F System GE Mammography System
Currently Employed by DDI:	No
Last Known Address:	2220 Shannon Cove Horn Lake, MS 38637
Last Known Telephone Number:	(662) 393-5500

*Defendants' Response to
Toshiba America Medical Systems, Inc.'s
First Set of Interrogatories*

Employee Name:	Brian Gibbs
Dates of Employment:	02/05/2001 – 6/22/2001
Equipment Operated:	Toshiba Excelart MRI System Toshiba Asteion CT System Toshiba R&F System
Currently Employed by DDI:	No
Last Known Address:	1749 Brookhaven Drive Southaven, MS 38671
Last Known Telephone Number:	(662) 393-3512
Employee Name:	Cindy Holmes
Dates of Employment:	12/11/2000 – 3/27/2002
Equipment Operated:	Toshiba Asteion CT System Toshiba R&F System GE Mammography System
Currently Employed by DDI:	No
Last Known Address:	1305 Dogwood Hollow Nesbit, MS 38651
Last Known Telephone Number:	(662) 449-3286
Employee Name:	Deborah May
Dates of Employment:	12/31/2001 – 2/14/2003
Equipment Operated:	Toshiba Excelart MRI System Toshiba Asteion CT System Toshiba R&F System
Currently Employed by DDI:	No
Last Known Address:	13260 Coldwater Drive Olive Branch, MS 38654
Last Known Telephone Number:	(662) 893-6891
Employee Name:	Pam Paulk
Dates of Employment:	07/09/2001 – 01/24/2003
Equipment Operated:	Toshiba Asteion CT System Toshiba Nuclear Camera System Toshiba R&F System
Currently Employed by DDI:	No
Last Known Address:	10327 Maplebrook Lane Olive Branch, MS 38654
Last Known Telephone Number:	(662) 890-7402

*Defendants' Response to
Toshiba America Medical Systems, Inc.'s
First Set of Interrogatories*

Employee Name: **Debra Powers**
Dates of Employment: 12/18/2000 – 1/22/2001
Equipment Operated: Toshiba Asteion CT System
Toshiba R&F System
Currently Employed by DDI: No
Last Known Address: 340 Crestfield Road
Coldwater, MS 38618
Last Known Telephone Number: (662) 622-0008

Employee Name: **James Smith**
Dates of Employment: PRN
Equipment Operated: Toshiba Nuclear Camera System
Currently Employed by DDI: No
Last Known Address: 2641 Union Extended (work)
Memphis, TN 38112
Last Known Telephone Number: (901) 458-0116 (work)

Employee Name: **Rick Stoughbaugh**
Dates of Employment: 12/1/2001 – 5/4/2001
Equipment Operated: Toshiba Nuclear Camera System
Toshiba R&F System
Currently Employed by DDI: No
Last Known Address: 5821 White Ridge Cir. S.
Olive Branch, MS 38654
Last Known Telephone Number: (662) 890-4929

Employee Name: **Joanne Tucker**
Dates of Employment: 12/11/2000 – 8/30/2002
Equipment Operated: Toshiba Excelart MRI System
Toshiba R&F System
Currently Employed by DDI: No
Last Known Address: 4114 Glenroy Drive
Memphis, TN 38125
Last Known Telephone Number: (901) 754-4508

*Defendants' Response to
Toshiba America Medical Systems, Inc.'s
First Set of Interrogatories*

Employee Name:	May Vokaty
Dates of Employment:	12/11/2000 – Present
Equipment Operated:	Toshiba Nuclear Camera System Toshiba R&F System Toshiba Powervision Ultrasound
Currently Employed by DDI:	Yes

2. Please identify the person or persons who were operating the Medical Equipment on the two occasions where the Medical Equipment allegedly malfunctioned causing injury to patients as alleged in paragraph 33 or your Crossclaim. In addition, please provide the following such information for each such incident:

- a. The date it occurred;
- b. The Medical Equipment involved;
- c. The identity of the person or persons injured;
- d. The nature of the injury suffered by the person(s) involved; and
- e. Whether any legal proceeding were instituted, or claims made against you, by the person or persons injured in the incidents.

Response: Defendants did not draft or file a Crossclaim in this matter, thus Defendants are not aware of any information that would be responsive to this request. If Plaintiff/Intervenor TAMS resubmits this request, an attempt would be made to provide the information requested.

3. Please identify all physicians or medical groups who ordered tests to be performed using the Medical Equipment during the period that such equipment was located at DeSoto. For each person identified, please provide the following information:

- a. The name of each physician;

*Defendants' Response to
Toshiba America Medical Systems, Inc.'s
First Set of Interrogatories*

- b. The date of each test;
- c. The specific nature of the test;
- d. The Medical Equipment used for each test;
- e. Whether there were any complaints made by the physician regarding the performance of the Medical Equipment; and
- f. A description of all documents created as part of or as a result of such test or as a result of any complaints regarding the performance of the Medical Equipment.

Response: Defendants object to this Interrogatory, including all of its subparts, because the information requested is protected under the Healthcare Insurance Portability and Accountability Act of 1996. Defendants further object to this Interrogatory to the extent that it seeks confidential, private, business or commercial information and proprietary information. Without waiving these objections, Defendants have attached hereto a list of referring physicians.

4. Please identify all persons, including physicians or medical groups, who refused to pay for services rendered by Desoto as a result of any alleged malfunctioning or failure to perform as warranted of the Medical Equipment during the relevant time period. For each person or entity identified, please provide the following information:

- a. The name of each person or entity;
- b. The date of such services;
- c. The Medical Equipment used to perform such services;
- d. The amount sought to be charged for such services and the amount, if any paid; and

*Defendants' Response to
Toshiba America Medical Systems, Inc.'s
First Set of Interrogatories*

- e. The reason for the refusal to pay for such services in whole or in part.

Response: Defendants do not maintain the information requested in the manner requested and to properly respond to this Interrogatory would place an undue burden and an enormous expense on the Defendants that outweighs its likely benefit. Pleading affirmatively, Defendants state that the vast majority of payments made to Desoto are from insurance providers who do not have the option to refuse payment of an insured's benefits based upon the quality of the medical care provided. Further, Defendants have no record of a physician assuming responsibility to pay for a patient's medical services.

5. Please identify all persons, including physicians or medical groups, who stopped referring patients to Desoto as a result of any alleged malfunctioning or failure to perform as warranted of the Medical Equipment during the relevant time period. For each person or entity identified, please provide the following information:

- a. The name of each person or entity;
- b. The date of such services and Medical Equipment utilized to perform such services; and
- c. The reasons provided to Desoto for the failure to refer additional patients.

Response: Defendants object to this Interrogatory to the extent that it seeks confidential, private, business or commercial information and proprietary information. Pleading affirmatively, Defendants state that when physicians and medical groups stop referring patients they typically do not send letters of explanation or make phone calls, but rather, they simply refer their patients elsewhere.

*Defendants' Response to
Toshiba America Medical Systems, Inc.'s
First Set of Interrogatories*

6. Identify by name, address and title all persons known to you, your attorney and any other representative, who have knowledge or information as to any facts pertaining to any of the occurrences or acts upon which the claims alleged in your Crossclaims are based.

Response: Defendants object to discovery beyond that which is allowed by Rule 33 of the Federal Rules of Civil Procedure which limits written interrogatories to 25 in number, including all discrete subparts. This Interrogatory goes beyond that which is allowed by the Federal Rules of Civil Procedure absent leave of court or party stipulation, neither of which have occurred. Without waiving the foregoing objection, Defendants are not aware of any information that would be responsive to this request in that Defendants did not draft or file a Crossclaim in this matter.

7. Identify and describe in detail every oral warranty, promise or assurance that TAMS allegedly provided to you regarding the Medical Equipment before, during and after the execution of the Master Lease as alleged in paragraphs 24 through 27 in your Crossclaim. For each warranty, promise or assurance identified, please provide the following information:

- a. The date and time of the warranty, promise or assurance;
- b. The person who made the warranty, promise or assurance;
- c. To whom the warranty, promise or assurance was made; and
- d. The content of the warranty, promise or assurance.

Response: Defendants object to discovery beyond that which is allowed by Rule 33 of the Federal Rules of Civil Procedure which limits written interrogatories to 25 in number, including all discrete subparts. This Interrogatory goes beyond that which is allowed by the

*Defendants' Response to
Toshiba America Medical Systems, Inc.'s
First Set of Interrogatories*

Federal Rules of Civil Procedure absent leave of court or party stipulation, neither of which have occurred. Without waiving the foregoing objection, Defendants are not aware of any information that would be responsive to this request in that Defendants did not draft or file a Crossclaim in this matter.

8. Identify for each piece of Medical Equipment:
 - a. The time period(s) that the equipment was in operation;
 - b. The monthly leasing cost;
 - b. (sic) The total revenues received by Desoto from the operation of the equipment.

Response: Defendants object to discovery beyond that which is allowed by Rule 33 of the Federal Rules of Civil Procedure which limits written interrogatories to 25 in number, including all discrete subparts. This Interrogatory goes beyond that which is allowed by the Federal Rules of Civil Procedure absent leave of court or party stipulation, neither of which have occurred. Defendants further object to this Interrogatory on the grounds that it is vague and overly broad in that the phrase "in operation" is not defined, and further Defendants deny that the Medical Equipment ever operated as warranted, promised and assured by Toshiba America Medical Systems, Inc.

Defendants further object to this Interrogatory on the grounds that the information requested in the second paragraph "b" above is not maintained by the Defendants in the manner requested in the normal course of business and to properly respond to this Interrogatory within the time allowed under the Federal Rules of Civil Procedure is not possible, but that Defendants are in the process of compiling the requested information and will supplement their answer when

*Defendants' Response to
Toshiba America Medical Systems, Inc.'s
First Set of Interrogatories*

the information has been assembled. Without waiving these objections, Defendants provide the following information in response to this Interrogatory:

Equipment:	Toshiba Excelart 1.5T MRI System
In Operation:	Objection
Monthly Leasing Cost:	\$23,345
Total Revenues from Operation of the Equipment:	Information not kept in the ordinary course of business
 Equipment:	 Toshiba Asteion CT System
In Operation:	Objection
Monthly Leasing Cost:	\$8,793
Total Revenues from Operation of the Equipment:	Information not kept in the ordinary course of business
 Equipment:	 Toshiba GCA7200 Nuclear Camera System
In Operation:	Objection
Monthly Leasing Cost:	\$5,486
Total Revenues from Operation of the Equipment:	Information not kept in the ordinary course of business
 Equipment:	 Toshiba DUA450 R&F System
In Operation:	Objection
Monthly Leasing Cost:	\$4,967
Total Revenues from Operation of the Equipment:	Information not kept in the ordinary course of business
 Equipment:	 Toshiba Powervision 6000 System
In Operation:	Objection
Monthly Leasing Cost:	\$2,675
Total Revenues from Operation of the Equipment:	Information not kept in the ordinary course of business

*Defendants' Response to
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Equipment:	GE Mammography System
In Operation:	Objection
Monthly Leasing Cost:	\$2,283
Total Revenues	
from Operation of the Equipment:	Information not kept in the ordinary course of business

9. Identify the equipment that Desoto purchased or leased to replace the functions performed by the Medical Equipment leased by Desoto from TAMS. For each piece of any such equipment, please provide the following information:

- a. The time period(s) that the equipment is/was in operation;
- b. From whom the equipment was purchased and/or leased;
- c. The make and model of the equipment;
- d. The monthly leasing cost and/or total purchase price;
- e. Whether the equipment was new or used; and
- f. The total revenues received by Desoto from the operation of the equipment.

Response: Defendants object to discovery beyond that which is allowed by Rule 33 of the Federal Rules of Civil Procedure which limits written interrogatories to 25 in number, including all discrete subparts. This Interrogatory goes beyond that which is allowed by the Federal Rules of Civil Procedure absent leave of court or party stipulation, neither of which have occurred.

Defendants object to subpart "a" of this Interrogatory on the grounds that it is vague and overly broad in that the phrase "in operation" is not defined; Defendants object to subpart "b" and "c" of this Interrogatory the extent that they seeks confidential, private, business or

*Defendants' Response to
Toshiba America Medical Systems, Inc.'s
First Set of Interrogatories*

commercial information and proprietary information; and Defendants further object to this Interrogatory on the grounds that the information requested in subpart "f" above is not maintained by the Defendants in the manner requested in the normal course of business and to properly respond to this Interrogatory within the time allowed under the Federal Rules of Civil Procedure is not possible, but that Defendants are in the process of compiling the requested information and will supplement their answer when the information has been assembled. Without waiving these objections, Defendants provide the following information in response to this Interrogatory:

Equipment:	MRI System
In Operation:	Objection
Purchased/Leased From:	Objection
Make and Model:	Objection
Monthly Leasing Cost:	\$20,520
Selling Price:	\$1,231,178
Equipment New or Used:	New
Total Revenues from Operation of the Equipment:	Information not kept in the ordinary course of business

Equipment:	MRI System Upgrades
In Operation:	Objection
Purchased/Leased From:	Objection
Make and Model:	Objection
Monthly Leasing Cost:	\$1,238
Selling Price:	\$66,874
Equipment New or Used:	New
Total Revenues from Operation of the Equipment:	Information not kept in the ordinary course of business

*Defendants' Response to
Toshiba America Medical Systems, Inc.'s
First Set of Interrogatories*

Equipment:	CT System
In Operation:	Objection
Purchased/Leased From:	Objection
Make and Model:	Objection
Monthly Leasing Cost:	\$5,841
Selling Price:	\$350,460
Equipment New or Used:	New
Total Revenues from Operation of the Equipment:	Information not kept in the ordinary course of business
 Equipment:	 Nuclear Camera System
In Operation:	Objection
Purchased/Leased From:	Objection
Make and Model:	Objection
Monthly Leasing Cost:	N/A
Selling Price:	\$150,542
Equipment New or Used:	Used
Total Revenues from Operation of the Equipment:	Information not kept in the ordinary course of business
 Equipment:	 R&F System
In Operation:	Objection
Purchased/Leased From:	Objection
Make and Model:	Objection
Monthly Leasing Cost:	N/A
Selling Price:	\$220,150
Equipment New or Used:	Remanufactured
Total Revenues from Operation of the Equipment:	Information not kept in the ordinary course of business

*Defendants' Response to
Toshiba America Medical Systems, Inc.'s
First Set of Interrogatories*

Equipment:	Ultrasound System
In Operation:	Objection
Purchased/Leased From:	Objection
Make and Model:	Objection
Monthly Leasing Cost:	
Selling Price:	\$225,000
Equipment New or Used:	New
Total Revenues from Operation of the Equipment:	Information not kept in the ordinary course of business

Respectfully Submitted,

Desoto Diagnostic Imaging, LLC, Randon J. Carvel, Lynn T. Carvel, Delta Radiology, P.C., Zobar Properties, LLC, Defendants and Counter-Claimants.

By:


Kyle P. Tate AR Bar No. 95097
for TATE, RAY, & BRADY
An Association of Professional Corporations
424 Ouachita Avenue
Hot Springs, AR 71901
(501) 624-9900

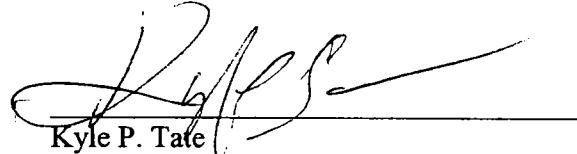
*Defendants' Response to
Toshiba America Medical Systems, Inc.'s
First Set of Interrogatories*

CERTIFICATE OF SERVICE

The undersigned attorney certifies that the foregoing has been served upon the attorney of record for all other parties in this proceeding and upon parties not represented by attorneys by telefax or by delivering a copy of this pleading to the attorney or party personally, or to the offices of such attorney or party, or by placing a copy in the U.S. Mail addressed to such attorney or party named below at his office with sufficient prepaid postage on this 14th day of April, 2003.

Ms. Rosetta B. Packer
MCCARTER & ENGLISH, LLP
Mellon Bank Center, Suite 700
1735 Market Street
Philadelphia, PA 19103-7501

Mr. John Chesney
Ms. Julianne Peck
DRINKER BIDDLE & REATH, LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996



Kyle P. Tate

VERIFICATION

Lynn T. Carvel, M.D., Chief Manager of Desoto Diagnostic Imaging, LLC, Defendant, states upon oath that she has read the statements contained in the foregoing Responses to TAMS' Interrogatories and they are true and correct to the best of her knowledge and belief.



LYNN T. CARVEL, M.D., Chief Manager

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DELAWARE LANDEN FINANCIAL SERVICES, INC.,	CIVIL ACTION NO. 2:02CV2810
Plaintiff,	
TOSHIBA AMERICA MEDICAL SYSTEMS, INC.	HON. RONALD J. BUCKWALTER
Plaintiff/Intervenor,	
v.	
DESOTO DIAGNOSTIC IMAGING, LLC, RANDON J. CARVEL, LYNN T. CARVEL, DELTA RADIOLOGY, P.C. and ZOBAR PROPERTIES, LLC	
Defendants and Counter- Claimants	

**SUPPLEMENTAL RESPONSE TO FIRST SET OF INTERROGATORIES
PROPOUNDED BY TOSHIBA AMERICA MEDICAL SYSTEMS, INC.**

NOW COME the Defendants, Desoto Diagnostic Imaging, LLC, Randon J. Carvel, Lynn T. Carvel, Delta Radiology, P.C. and Zobar Properties, LLC, by and through their attorneys, TATE, RAY & BRADY, by Kyle P. Tate, and for their Response to First Set of Interrogatories Propounded by Toshiba America Medical Systems, Inc. do hereby state and answer:

GENERAL OBJECTIONS

1. Defendants object to Plaintiff/Intervenor's instructions and definitions to the extent that they suggest or require any burdens, responsibilities, or objections beyond those set forth in or required by the Federal Rules of Civil Procedure. In responding to these requests, Defendants will comply with the applicable provisions of the Federal Rules of Civil Procedure.

2. Defendants object to any discovery directed at information protected by the attorney work product doctrine, the attorney-client privilege or any other applicable privilege. Defendants further object to any discovery which seeks information that is private, confidential business or commercial information, trade secrets, confidential research or development or proprietary information.

3. Defendants object to discovery which is not relevant or material and which is not reasonable calculated to lead to the discovery of proprietary information.

4. Defendants object to discovery which is unduly burdensome, overly broad, vague and/or ambiguous, and not subject to reasonable limitation in time. Defendants further object to discovery which does not permit the identification of particular documents, subjects and time-frames with sufficient particularity to permit a reasonable response.

5. DEFENDANTS OBJECT TO DISCOVERY BEYOND THAT WHICH IS ALLOWED BY RULE 33 OF THE FEDERAL RULES OF CIVIL PROCEDURE WHICH LIMITS WRITTEN INTERROGATORIES TO 25 IN NUMBER, INCLUDING ALL DISCRETE SUBPARTS.

6. Each of these general objections is incorporated into each and every response as though fully set forth at length therein, in addition to any specific objections stated.

7. Defendants reserve the right to supplement their answers.

ANSWERS TO INTERROGATORIES

2. Please identify the person or persons who were operating the Medical Equipment on the two occasions where the Medical Equipment allegedly malfunctioned causing injury to patients as alleged in paragraph 33 or your Crossclaim. In addition, please provide the following such information for each such incident:

- a. The date it occurred;
- b. The Medical Equipment involved;
- c. The identity of the person or persons injured;
- d. The nature of the injury suffered by the person(s) involved; and
- e. Whether any legal proceeding were instituted, or claims made against you, by the person or persons injured in the incidents.

Response:

Date of Occurrence:	July 27, 2001
Equipment Involved:	Toshiba GCA 7200 Nuclear Camera System
Personnel Involved:	May Vokaty
Person Injured:	Cloyce Shearin
Nature of Injury:	Robocontour failed during acquisition of patient data causing damage to the soft tissue of Mrs. Shearin's upper arm, causing immediate bruising
Legal Proceedings Instituted:	None at this time
Date of Occurrence:	September 12, 2001
Equipment Involved:	Toshiba GCA 7200 Nuclear Camera System
Personnel Involved:	May Vokaty
Nature of Injury:	Robocontour failed during acquisition of patient data, but tech was able to stop the camera from hitting the patient. No injury occurred.
Legal Proceedings Instituted:	None at this time

3. Please identify all physicians or medical groups who ordered tests to be performed using the Medical Equipment during the period that such equipment was located at DeSoto. For each person identified, please provide the following information:

- a. The name of each physician;
- b. The date of each test;
- c. The specific nature of the test;
- d. The Medical Equipment used for each test;

- e. Whether there were any complaints made by the physician regarding the performance of the Medical Equipment; and
- f. A description of all documents created as part of or as a result of such test or as a result of any complaints regarding the performance of the Medical Equipment.

Response: The information requested in subpart (a) of this Interrogatory has previously been provided in a list of over 450 referring physicians. Regarding the remaining information requested, Defendants have provided electronic images burned to 100 compact discs to date, and will continue to supplement this disclosure. Through the use of your Dicom viewer you will be able to ascertain and compile the requested information such as the name of the patient, the date of the exam, the specific nature of each exam, the name of the referring physician and so forth.

4. Please identify all persons, including physicians or medical groups, who refused to pay for services rendered by Desoto as a result of any alleged malfunctioning or failure to perform as warranted of the Medical Equipment during the relevant time period. For each person or entity identified, please provide the following information:

- a. The name of each person or entity;
- b. The date of such services;
- c. The Medical Equipment used to perform such services;
- d. The amount sought to be charged for such services and the amount, if any paid; and
- e. The reason for the refusal to pay for such services in whole or in part.

Response: Although Defendants do not maintain the information requested in the manner requested, Defendant is unaware of any "self-pay" patients that have declined to pay for

services as a result of any alleged malfunctioning or failure to perform as warranted of the medical equipment during the relevant time period.

5. Please identify all persons, including physicians or medical groups, who stopped referring patients to Desoto as a result of any alleged malfunctioning or failure to perform as warranted of the Medical Equipment during the relevant time period. For each person or entity identified, please provide the following information:

- a. The name of each person or entity;
- b. The date of such services and Medical Equipment utilized to perform such services; and
- c. The reasons provided to Desoto for the failure to refer additional patients.

Response: Defendants are not aware of any information that would be responsive to this interrogatory due to the fact that as previously stated, when physicians and medical groups stop referring patients they typically do not send letters of explanation or make phone calls, but rather, they simply refer their patients elsewhere.

6. Identify by name, address and title all persons known to you, your attorney and any other representative, who have knowledge or information as to any facts pertaining to any of the occurrences or acts upon which the claims alleged in your Crossclaims are based.

Response: This information has already been disclosed with the exception of Defendants' expert witness(s) which will be disclosed in accordance with the court's order and the Federal Rules of Civil Procedure.

7. Identify and describe in detail every oral warranty, promise or assurance that TAMS allegedly provided to you regarding the Medical Equipment before, during and after the

execution of the Master Lease as alleged in paragraphs 24 through 27 in your Crossclaim. For each warranty, promise or assurance identified, please provide the following information:

- a. The date and time of the warranty, promise or assurance;
- b. The person who made the warranty, promise or assurance;
- c. To whom the warranty, promise or assurance was made; and
- d. The content of the warranty, promise or assurance.

Response: Without waiving any previous objections, Defendants maintain that the statements set forth below, while not verbatim, are representative of the oral warranties, promises and/or assurances made by agents, representatives and employees of Toshiba America Medical Systems, Inc. to the Defendants.

- Toshiba representatives promised Dr. Carvel before, during and after the purchase of the medical equipment that Toshiba was totally and fully committed to providing Dr. Carvel with state-of-the-art equipment that performed at its highest level and in operation at all times with little or no downtime. In soliciting Dr. Carvel's business, Toshiba representatives, including but not limited to Dave Steiff, Greg Zagorski, Mike Smith and Dave Begy, reiterated that Toshiba would be a single-source for sales, service and finance which would be a fabulous opportunity for both parties involved in that Dr. Carvel would receive state-of-the-art equipment, and that Toshiba would be able to use DDI as a premier show site since Toshiba did not have a show site of this kind in this area.
- Once DDI opened, a Japanese executive from Toshiba was flown in specifically for the purpose of meeting with Dr. Carvel. During the open house celebration, the Japanese executive told Dr. Carvel that he would do anything and everything in his power to make DDI successful, and that he was very excited to be partners with Dr. Carvel on this project. The Japanese executive made promises to Dr. Carvel with regard to the uptime guaranty. The Japanese executive also promised Dr. Carvel that she was receiving state-of-the-art equipment which would provide her with the highest quality images.
- During a fifteen month period of time in which over 200 service calls and/or application visits were made to DeSoto Diagnostic Imaging to address the different equipment modality problems, Toshiba representatives repeatedly promised Dr. Carvel and/or Paul King that the equipment would be up-and-running, and that they would have the medical equipment in good working order.

8. Identify for each piece of Medical Equipment:

- a. The time period(s) that the equipment was in operation;
- b. The monthly leasing cost;
- b. (sic) The total revenues received by Desoto from the operation of the equipment.

Response: Without waiving any previous objections, Defendants renew their objection to this Interrogatory on the grounds that it is vague and overly broad in that the phrase "in operation" is not defined, and further Defendants deny that the Medical Equipment ever operated as warranted, promised and assured by Toshiba America Medical Systems, Inc.

Without waiving these objections, Defendants provide the following information in response to this Interrogatory:

Equipment:

Date Installed:

Date Deinstalled:

Monthly Leasing Cost:

Total Revenues from Operation

Per Piece of Equipment:

Toshiba Excelart 1.5T MRI System

Between October 11, 2000 and December 7, 2000

February 28, 2002

\$23,345

Information not kept in the ordinary course of business during first thirty-two months of operation

Equipment:

Date Installed:

Date Deinstalled:

Monthly Leasing Cost:

Total Revenues from Operation

Per Piece of Equipment:

Toshiba Asteion CT System

Between October 11, 2000 and December 7, 2000

August 12, 2002

\$8,793

Information not kept in the ordinary course of business during first thirty-two months of operation

Equipment:

Date Installed:

Date Deinstalled:

Monthly Leasing Cost:

Total Revenues from Operation

Per Piece of Equipment:

Toshiba GCA7200 Nuclear Camera System

Between October 11, 2000 and December 7, 2000

February 28, 2002

\$5,486

Information not kept in the ordinary course of business during first thirty-two months of operation

Equipment: Toshiba DUA450 R&F System
Date Installed: Between October 11, 2000 and December 7, 2000
Date Deinstalled: February 28, 2002
Monthly Leasing Cost: \$4,967
Total Revenues from Operation
Per Piece of Equipment:

Information not kept in the ordinary course of business during first thirty-two months of operation

Equipment: Toshiba Powervision 6000 System
Date Installed: Between October 11, 2000 and December 7, 2000
Date Deinstalled: February 28, 2002
Monthly Leasing Cost: \$2,675
Total Revenues from Operation
Per Piece of Equipment:

Information not kept in the ordinary course of business during first thirty-two months of operation

Equipment: GE Mammography System
Date Installed: Between October 11, 2000 and December 7, 2000
Date Deinstalled: February 28, 2002
Monthly Leasing Cost: \$2,283
Total Revenues from Operation
Per Piece of Equipment:

Information not kept in the ordinary course of business during first thirty-two months of operation

9. Identify the equipment that Desoto purchased or leased to replace the functions performed by the Medical Equipment leased by Desoto from TAMS. For each piece of any such equipment, please provide the following information:

- a. The time period(s) that the equipment is/was in operation;
- b. From whom the equipment was purchased and/or leased;
- c. The make and model of the equipment;
- d. The monthly leasing cost and/or total purchase price;
- e. Whether the equipment was new or used; and
- f. The total revenues received by Desoto from the operation of the equipment.

Response: Without waiving any previous objections, Defendants provide the following information in response to this Interrogatory:

Equipment: MRI System
In Operation: April 30, 2002 to present
Purchased/Leased From: Siemens Medical Solutions USA, Inc.
Make and Model: Siemens Symphony, 1.5T Maestro Class MRI
Monthly Leasing Cost: \$20,520
Selling Price: \$1,231,178
Equipment New or Used: New
Total Revenues from Operation
Per Piece of Equipment:

Information not kept in the ordinary course of business during first thirty-two months of operation

Equipment: MRI System Upgrades
In Operation: April 30, 2002 to present
Purchased/Leased From: Siemens Medical Solutions USA, Inc.
Make and Model: Body Imaging Package, w/o extender
 Advanced Turbo Syngo #H,S
 Advanced Angiography Syngo #H,S
 CARE Bolus Syngo #H,S
 IPP – Panoramic Table Syngo #H,S
 CP Body Array Flex Coil
Monthly Leasing Cost: \$1,238
Selling Price: \$66,874
Equipment New or Used: New
Total Revenues from Operation
Per Piece of Equipment:

Information not kept in the ordinary course of business during first thirty-two months of operation

Equipment: CT System
In Operation: August 16, 2002 to present
Purchased/Leased From: Siemens Medical Solutions USA, Inc.
Make and Model: Siemens Somatom Emotion Duo CT
Monthly Leasing Cost: \$5,841
Selling Price: \$350,460
Equipment New or Used: New
Total Revenues from Operation
Per Piece of Equipment:

Information not kept in the ordinary course of business during first thirty-two months of operation

Equipment: Nuclear Camera System
In Operation: March 7, 2002 to present
Purchased/Leased From: Miller Medical Imaging
Make and Model: Reconditioned SMV DSX Nuclear Medicine Imaging System
Monthly Leasing Cost: N/A
Selling Price: \$150,542
Equipment New or Used: Used

Total Revenues from Operation
Per Piece of Equipment:

Information not kept in the ordinary course of
business during first thirty-two months of operation

Equipment:

R&F System

In Operation:

March 14, 2002 to present

Purchased/Leased From:

Medical Equipment Consulting Services, Inc.

Make and Model:

MECS Genesis Plus Remanufactured GE Advantx
Rad/Fluoro System with new CPI High Frequency
Generator and New InfiMed GoldOne Digital
System

Monthly Leasing Cost:

N/A

Selling Price:

\$220,150

Equipment New or Used:

Remanufactured

Total Revenues from Operation

Information not kept in the ordinary course of
business during first thirty-two months of operation

Per Piece of Equipment:

Equipment:

Ultrasound System

In Operation:

May 17, 2003 to present

Purchased/Leased From:

Siemens Medical Solutions USA, Inc.

Make and Model:

Acuson Aspen Ultrasound system

Monthly Leasing Cost:

N/A

Selling Price:

\$225,000

Equipment New or Used:

New

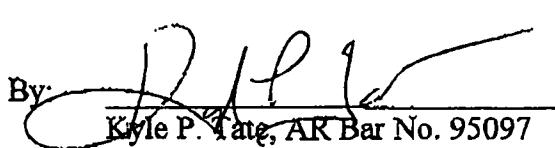
Total Revenues from Operation

Information not kept in the ordinary course of
business during first thirty-two months of operation

Per Piece of Equipment:

Respectfully Submitted,

By:

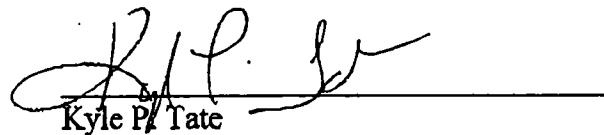

Kyle P. Tate, AR Bar No. 95097
for TATE LAW FIRM
424 Ouachita Avenue
Hot Springs, AR 71901
(501) 624-9900

CERTIFICATE OF SERVICE

The undersigned attorney certifies that the foregoing has been served upon the attorney of record for all other parties in this proceeding and upon parties not represented by attorneys by telefax or by delivering a copy of this pleading to the attorney or party personally, or to the offices of such attorney or party, or by placing a copy in the U.S. Mail addressed to such attorney or party named below at his office with sufficient prepaid postage on this 21st day of August, 2003.

Mr. John Chesney
Ms. Julianne Peck
DRINKER BIDDLE & REATH, LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996

Ms. Rosetta B. Packer
MCCARTER & ENGLISH, LLP
Mellon Bank Center, Suite 700
1735 Market Street
Philadelphia, PA 19103-7501



Kyle P. Tate

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DELADE LANDEN FINANCIAL
SERVICES, INC.,

Plaintiff,

CIVIL ACTION NO. 2:02CV2810

TOSHIBA AMERICA MEDICAL
SYSTEMS, INC.

HON. RONALD J. BUCKWALTER

Plaintiff/Intervenor,

v.

DESOTO DIAGNOSTIC IMAGING, LLC,
RANDON J. CARVEL, LYNN T. CARVEL,
DELTA RADIOLOGY, P.C. and
ZOBAR PROPERTIES, LLC

Defendants and Counter-
Claimants

**AMENDED SUPPLEMENTAL RESPONSE TO FIRST SET OF INTERROGATORIES
PROPOUNDED BY TOSHIBA AMERICA MEDICAL SYSTEMS, INC.**

NOW COME the Defendants, Desoto Diagnostic Imaging, LLC, Randon J. Carvel, Lynn T. Carvel, Delta Radiology, P.C. and Zobar Properties, LLC, by and through their attorneys, TATE LAW FIRM, by the undersigned attorney, and for their Amended Response to First Set of Interrogatories Propounded by Toshiba America Medical Systems, Inc. do hereby state and answer:

GENERAL OBJECTIONS

1. Defendants object to Plaintiff/Intervenor's instructions and definitions to the extent that they suggest or require any burdens, responsibilities, or objections beyond those set forth in or required by the Federal Rules of Civil Procedure. In responding to these requests, Defendants will comply with the applicable provisions of the Federal Rules of Civil Procedure.

2. Defendants object to any discovery directed at information protected by the attorney work product doctrine, the attorney-client privilege or any other applicable privilege. Defendants further object to any discovery which seeks information that is private, confidential business or commercial information, trade secrets, confidential research or development or proprietary information.

3. Defendants object to discovery which is not relevant or material and which is not reasonable calculated to lead to the discovery of proprietary information.

4. Defendants object to discovery which is unduly burdensome, overly broad, vague and/or ambiguous, and not subject to reasonable limitation in time. Defendants further object to discovery which does not permit the identification of particular documents, subjects and time-frames with sufficient particularity to permit a reasonable response.

5. DEFENDANTS OBJECT TO DISCOVERY BEYOND THAT WHICH IS ALLOWED BY RULE 33 OF THE FEDERAL RULES OF CIVIL PROCEDURE WHICH LIMITS WRITTEN INTERROGATORIES TO 25 IN NUMBER, INCLUDING ALL DISCRETE SUBPARTS.

6. Each of these general objections is incorporated into each and every response as though fully set forth at length therein, in addition to any specific objections stated.

7. Defendants reserve the right to supplement their answers.

ANSWERS TO INTERROGATORIES

3. Please identify all physicians or medical groups who ordered tests to be performed using the Medical Equipment during the period that such equipment was located at DeSoto. For each person identified, please provide the following information:

a. The name of each physician;

- b. The date of each test;
- c. The specific nature of the test;
- d. The Medical Equipment used for each test;
- e. Whether there were any complaints made by the physician regarding the performance of the Medical Equipment; and
- f. A description of all documents created as part of or as a result of such test or as a result of any complaints regarding the performance of the Medical Equipment.

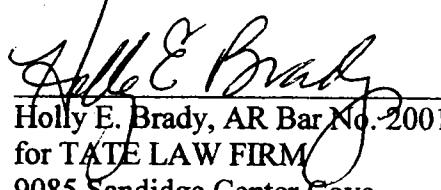
Response: The information requested in subpart (a) of this Interrogatory has previously been provided in a list of over 450 referring physicians. Regarding the remaining information requested, Defendants have provided electronic images burned to 180 compact discs to date, and will continue to supplement this disclosure. Through the use of your Dicom viewer you will be able to ascertain and compile the requested information such as the name of the patient, the date of the exam, the specific nature of each exam, the name of the referring physician and so forth.

8. Identify for each piece of Medical Equipment:
 - a. The time period(s) that the equipment was in operation;
 - b. The monthly leasing cost;
 - b. (sic) The total revenues received by Desoto from the operation of the equipment.

Response: Without waiving any previous objections, Defendants renew their objection to this Interrogatory on the grounds that it is vague and overly broad in that the phrase "in operation" is not defined, and further Defendants deny that the Medical Equipment ever operated as warranted, promised and assured by Toshiba America Medical Systems, Inc.

Respectfully Submitted,

By:

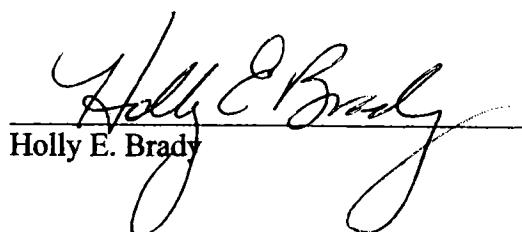

Holly E. Brady, AR Bar No. 2001160
for TATE LAW FIRM
9085 Sandidge Center Cove
Olive Branch, MS 38654
(662) 893-9933

CERTIFICATE OF SERVICE

The undersigned attorney certifies that the foregoing has been served upon the attorney of record for all other parties in this proceeding and upon parties not represented by attorneys by telefax or by delivering a copy of this pleading to the attorney or party personally, or to the offices of such attorney or party, or by placing a copy in the U.S. Mail addressed to such attorney or party named below at his office with sufficient prepaid postage on this 15 day of September, 2003.

Mr. John Chesney
Ms. Julianne Peck
DRINKER BIDDLE & REATH, LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996

Ms. Rosetta B. Packer
MCCARTER & ENGLISH, LLP
Mellon Bank Center, Suite 700
1735 Market Street
Philadelphia, PA 19103-7501


Holly E. Brady

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DELAGE LANDEN FINANCIAL
SERVICES, INC.,

CIVIL ACTION NO. 2:02CV2810

Plaintiff,

TOSHIBA AMERICA MEDICAL
SYSTEMS, INC.

Plaintiff/Intervenor,

v.

DESO TO DIAGNOSTIC IMAGING, LLC,
RANDON J. CARVEL, LYNN T. CARVEL,
DELTA RADIOLOGY, P.C. and
ZOBAR PROPERTIES, LLC

Defendants and Counter-
Claimants

**SECOND SUPPLEMENTAL RESPONSE TO FIRST SET OF INTERROGATORIES
PROPOUNDED BY TOSHIBA AMERICA MEDICAL SYSTEMS, INC.**

NOW COME the Defendants, Desoto Diagnostic Imaging, LLC, Randon J. Carvel, Lynn T. Carvel, Delta Radiology, P.C. and Zobar Properties, LLC, by and through their attorneys, STATE LAW FIRM, by the undersigned attorney, and for their Second Supplemental Response to First Set of Interrogatories Propounded by Toshiba America Medical Systems, Inc. do hereby state and answer:

GENERAL OBJECTIONS

1. Defendants object to Plaintiff/Intervenor's instructions and definitions to the extent that they suggest or require any burdens, responsibilities, or objections beyond those set forth in or required by the Federal Rules of Civil Procedure. In responding to these requests, Defendants will comply with the applicable provisions of the Federal Rules of Civil Procedure.

2. Defendants object to any discovery directed at information protected by the attorney work product doctrine, the attorney-client privilege or any other applicable privilege. Defendants further object to any discovery which seeks information that is private, confidential business or commercial information, trade secrets, confidential research or development or proprietary information.

3. Defendants object to discovery which is not relevant or material and which is not reasonable calculated to lead to the discovery of proprietary information.

4. Defendants object to discovery which is unduly burdensome, overly broad, vague and/or ambiguous, and not subject to reasonable limitation in time. Defendants further object to discovery which does not permit the identification of particular documents, subjects and time-frames with sufficient particularity to permit a reasonable response.

5. DEFENDANTS OBJECT TO DISCOVERY BEYOND THAT WHICH IS ALLOWED BY RULE 33 OF THE FEDERAL RULES OF CIVIL PROCEDURE WHICH LIMITS WRITTEN INTERROGATORIES TO 25 IN NUMBER, INCLUDING ALL DISCRETE SUBPARTS.

6. Each of these general objections is incorporated into each and every response as though fully set forth at length therein, in addition to any specific objections stated.

7. Defendants reserve the right to supplement their answers.

ANSWERS TO INTERROGATORIES

1. Please identify all of the technicians or other persons employed by you who operated any of the Medical Equipment at Desoto at any time during which such equipment was located at Desoto. For each person identified, please provide the following information:

a. The name of each such person;

- b. The dates of employment for each such person;
- c. The Medical Equipment each such person operated in the scope of his or her employment;
- d. Whether or not the person is still employed by you; and
- e. The last known address and telephone number for each such person who is no longer employed by you.

Response: All responsive information has been provided to date, however, Defendants, per the Federal Rules of Civil Procedure, reserve the right to supplement this response in the event new information which would be responsive to this interrogatory comes to light.

2. Please identify the person or persons who were operating the Medical Equipment on the two occasions where the Medical Equipment allegedly malfunctioned causing injury to patients as alleged in paragraph 33 or your Crossclaim. In addition, please provide the following such information for each such incident:

- a. The date it occurred;
- b. The Medical Equipment involved;
- c. The identity of the person or persons injured;
- d. The nature of the injury suffered by the person(s) involved; and
- e. Whether any legal proceeding were instituted, or claims made against you, by the person or persons injured in the incidents.

Response: Defendants state that they have already properly responded to this Interrogatory in their First Supplemental Response to First Set of Interrogatories Propounded by Toshiba America Medical Systems, Inc.

3. Please identify all physicians or medical groups who ordered tests to be performed using the Medical Equipment during the period that such equipment was located at DeSoto. For each person identified, please provide the following information:

- a. The name of each physician;
- b. The date of each test;
- c. The specific nature of the test;
- d. The Medical Equipment used for each test;
- e. Whether there were any complaints made by the physician regarding the performance of the Medical Equipment; and
- f. A description of all documents created as part of or as a result of such test or as a result of any complaints regarding the performance of the Medical Equipment.

Response: Without waiving any previous objections, Defendants state that they have already properly responded to this Interrogatory in their First Supplemental Response and their Amended Supplemental Response to First Set of Interrogatories Propounded by Toshiba America Medical Systems, Inc. and that after an exhaustive and burdensome effort to comply with the Federal Rules of Civil Procedure, responsive information has been provided. In the event that new responsive information is discovered, Defendants agree to supplement this response according to the Federal Rules of Civil Procedure. Furthermore, Defendants state that there are no documented complaints kept in their ordinary course of business.

4. Please identify all persons, including physicians or medical groups, who refused to pay for services rendered by Desoto as a result of any alleged malfunctioning or failure to perform as warranted of the Medical Equipment during the relevant time period. For each person or entity identified, please provide the following information:

- a. The name of each person or entity;
- b. The date of such services;
- c. The Medical Equipment used to perform such services;
- d. The amount sought to be charged for such services and the amount, if any paid; and
- e. The reason for the refusal to pay for such services in whole or in part.

Response: Defendants state that they have already properly responded to this Interrogatory in their Response to First Set of Interrogatories Propounded by Toshiba America Medical Systems, Inc. and supplemental responses thereto. In the event that new responsive information is discovered, Defendants agree to supplement this response according to the Federal Rules of Civil Procedure.

5. Please identify all persons, including physicians or medical groups, who stopped referring patients to Desoto as a result of any alleged malfunctioning or failure to perform as warranted of the Medical Equipment during the relevant time period. For each person or entity identified, please provide the following information:

- a. The name of each person or entity;
- b. The date of such services and Medical Equipment utilized to perform such services; and
- c. The reasons provided to Desoto for the failure to refer additional patients.

Response: Without waiving any previous objections, Defendants state that they have already properly responded to this Interrogatory in their Response to First Set of Interrogatories Propounded by Toshiba America Medical Systems, Inc. and supplemental responses thereto. In

the event that new responsive information is discovered, Defendants agree to supplement this response according to the Federal Rules of Civil Procedure.

6. Identify by name, address and title all persons known to you, your attorney and any other representative, who have knowledge or information as to any facts pertaining to any of the occurrences or acts upon which the claims alleged in your Crossclaims are based.

Response: Without waiving any previous objections, Defendants state that this information has already been disclosed with the exception of those persons listed below, and Defendants' expert witness(s) which will be disclosed in accordance with the court's order and the Federal Rules of Civil Procedure. In the event that new responsive information is discovered, Defendants agree to supplement this response according to the Federal Rules of Civil Procedure.

- 1) Philip Daugherty
H & H Systems & Design
130 E. Main Street
New Albany, IN 47150
- 2) Steve Whitworth
H & H Systems & Design
130 E. Main Street
New Albany, IN 47150
- 3) Frank Heinz
H & H Systems & Design
130 E. Main Street
New Albany, IN 47150
- 4) Paul Forbes
Med Image Systems, Inc.
1679 Shelby Oaks, Suite 6
Memphis, TN 38134
- 5) James Smith
Cardinal Health
2641 Union Extended
Memphis, TN 38112

7. Identify and describe in detail every oral warranty, promise or assurance that TAMS allegedly provided to you regarding the Medical Equipment before, during and after the execution of the Master Lease as alleged in paragraphs 24 through 27 in your Crossclaim. For each warranty, promise or assurance identified, please provide the following information:

- a. The date and time of the warranty, promise or assurance;
- b. The person who made the warranty, promise or assurance;
- c. To whom the warranty, promise or assurance was made; and
- d. The content of the warranty, promise or assurance.

Response: Without waiving any previous objections, Defendants state that they have already properly responded to this Interrogatory in their First Supplemental Response to First Set of Interrogatories Propounded by Toshiba America Medical Systems, Inc. in addition to the testimony given by Dr. Lynn T. Carvel in the four days of 30(b)(6) depositions in which she testified on this very issue.

8. Identify for each piece of Medical Equipment:

- a. The time period(s) that the equipment was in operation;
- b. The monthly leasing cost;
- b. (sic) The total revenues received by Desoto from the operation of the equipment.

Response: Without waiving any previous objections, Defendants state that they have already properly responded to this Interrogatory in their First Supplemental Response and their Amended Supplemental Response to First Set of Interrogatories Propounded by Toshiba America Medical Systems, Inc.

CERTIFICATE OF SERVICE

The undersigned attorney certifies that the foregoing has been served upon the attorney of record for all other parties in this proceeding and upon parties not represented by attorneys by telefax or by delivering a copy of this pleading to the attorney or party personally, or to the offices of such attorney or party, or by placing a copy in the U.S. Mail addressed to such attorney or party named below at his office with sufficient prepaid postage on this 3rd day of October, 2003.

Mr. John Chesney
Ms. Julianne Peck
DRINKER BIDDLE & REATH, LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996

Ms. Rosetta B. Packer
MCCARTER & ENGLISH, LLP
Mellon Bank Center, Suite 700
1735 Market Street
Philadelphia, PA 19103-7501

Kyle P. Tate / hb
Kyle P. Tate

VERIFICATION

Lynn T. Carvel, M.D., Chief Manager of DeSoto Diagnostic Imaging, LLC, Defendant, states upon oath that she has read the statements contained in the foregoing Responses to TAMS' Interrogatories and they are true and correct to the best of her knowledge and belief.



Lynn T. Carvel, M.D.
LYNN T. CARVEL, M.D., Chief Manager

Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DELAGE LANDEN FINANCIAL SERVICES, INC.,	
Plaintiff,	CIVIL ACTION NO. 2:02CV2810
TOSHIBA AMERICA MEDICAL SYSTEMS, INC.	HON. RONALD J. BUCKWALTER
Plaintiff/Intervenor,	
v.	
DESOTO DIAGNOSTIC IMAGING, LLC, RANDON J. CARVEL, LYNN T. CARVEL, DELTA RADIOLOGY, P.C. and ZOBAR PROPERTIES, LLC	
Defendants and Counter- Claimants	

RESPONSE TO FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
PROPOUNDED BY TOSHIBA AMERICA MEDICAL SYSTEMS, INC.

NOW COME the Defendants, Desoto Diagnostic Imaging, LLC, Randon J. Carvel, Lynn T. Carvel, Delta Radiology, P.C. and Zobar Properties, LLC, by and through their attorneys, TATE, RAY & BRADY, by Kyle P. Tate, do hereby submit their Response to First Request for Production of Documents Propounded by Toshiba America Medical Systems, Inc. Defendants also reserve their right to amend and/or supplement their responses at any time in the future.

GENERAL OBJECTIONS

1. Defendants object to Plaintiff/Intervenor's instructions and definitions to the extent that they suggest or require any burdens, responsibilities, or objections beyond those set forth in or required by the Federal Rules of Civil Procedure. In responding to these requests, Defendants will comply with the applicable provisions of the Federal Rules of Civil Procedure.

*Defendants' Response to
Toshiba America Medical Systems, Inc.
First Request for Production*

2. Defendants object to any discovery directed at information protected by the attorney work product doctrine, the attorney-client privilege or any other applicable privilege. Defendants further object to any discovery which seeks information that is private, confidential business or commercial information, trade secrets, confidential research or development or proprietary information.
3. Defendants object to discovery which is not relevant or material and which is not reasonably calculated to lead to the discovery of admissible evidence.
4. Defendants object to discovery which is unduly burdensome, overly broad, vague and/or ambiguous, and not subject to reasonable limitation in time. Defendants further object to discovery which does not permit the identification of particular documents, subjects and time-frames with sufficient particularity to permit a reasonable response.
5. Defendants object to Plaintiff/Intervenor's document requests that request documents from entities or persons other than Defendants or that request documents that are not in the possession, custody or control of the Defendants.
6. Defendants object to Plaintiff/Intervenor's requests for production of documents to the extent they seek documents which have already been produced in this litigation from any person or party or to the extent they seek documents that are publicly available.
7. Each of these general objection is incorporated into each and ever response as though fully set forth at length therein, in addition to any specific objections stated.
8. Defendants reserve the right to supplement their answers.

*Defendants' Response to
Toshiba America Medical Systems, Inc.
First Request for Production*

RESPONSE TO DOCUMENT REQUESTS

1. Any and all documents identified in your answers to TAMS' First Set of Interrogatories to Defendants.

Response: Defendants have produced documents responsive to this Request which have not been previously produced by any party in this litigation.

2. All documents referenced, viewed, consulted or otherwise used in preparation of your answers to TAMS' First Set of Interrogatories.

Response: Defendants object to this request to the extent that the documents requested were prepared in anticipation of litigation and are protected by the attorney work product doctrine, the attorney-client privilege or any other applicable privilege. Defendants further object to this request to the extent that it seeks information that has already been produced in this litigation. Without waiving these objections, the general objections or any other objections, Defendants have produced documents responsive to this Request which have not been previously produced by any party in this litigation.

3. Any and all documents and/or tangible things that support or relate to any of the allegations made in the Crossclaim, or which you referred to or relied upon in drafting the Crossclaim.

Response: Defendants did not draft or file a Crossclaim in this matter, thus Defendants are not aware of any information that would be responsive to this request. If Plaintiff/Intervenor Toshiba America Medical Systems, Inc. resubmits this request, an attempt would be made to provide the information requested.

*Defendants' Response to
Toshiba America Medical Systems, Inc.
First Request for Production*

4. All documents that refer or relate to TAMS and/or the Medical Equipment, including but not limited to all documents concerning the Master Lease and Service Agreements.

Response: Defendants have produced documents responsive to this Request in its initial disclosures and in the Responses hereto. See attached.

5. All documents and materials upon which you allegedly relied regarding the performance and reliability of the Medical Equipment prior and subsequent to the execution of the Master Lease, including but not limited to brochures, advertisements, manuals, and promotional materials.

Response: See attached.

6. All images and x-rays taken by the Medical Equipment, including but not limited to all images and x-rays that you contend were defective or of poor quality as a result of alleged failure of the Medical Equipment to perform as warranted.

Response: Defendants object to this request on the grounds that to provide the information requested in the manner requested would be in violation of the Healthcare Insurance Portability and Accountability Act of 1996. Defendants further object to this request on the grounds that it is unduly burdensome inasmuch as DDI does not maintain the information requested in the manner requested. Defendants state that images are not stored as tangible films or x-rays, but rather stored as Digital Image Communication and Medicine (DICOM) images on a Picture Archive Communications System (PACS) which can only be viewed by a specialized system. To respond to this Interrogatory would require that each individual image be

*Defendants' Response to
Toshiba America Medical Systems, Inc.
First Request for Production*

downloaded to the appropriate modality and then printed to film, at a minimum of 30 minutes per film, with thousands of pictures on the system.

7. All documents that support your contention in paragraph 32 of your Crossclaim that there were "approximately 100 separate incidents" during which the Medical Equipment failed to operate as warranted and failed of its essential purpose.

Response: Defendants are not aware of any information that would be responsive to this request in that Defendants did not draft or file a Crossclaim in this matter. If Plaintiff/Intervenor Toshiba America Medical Systems, Inc. resubmits this request, an attempt would be made to provide the information requested.

8. All documents that refer or relate to the use of the Medical Equipment, including without limitation all patient log books and records that reflect such use, and all documents that refer or relate to the revenue generated by such use.

Response: Defendants object to this request on the grounds that to provide the information requested in the manner requested would be in violation of the Healthcare Insurance Portability and Accountability Act of 1996. Defendants also object to this request to the extent that it seeks confidential, private, business or commercial information or proprietary information. By way of further response, Defendants are not aware of any documents responsive to the request as set forth for documents referring or relating to the revenue generated by the use of the Medical Equipment. Without waiving these objections, the general objections or any other objections, Defendants have produced documents responsive to this Request which have not been previously produced by any party in this litigation.

*Defendants' Response to
Toshiba America Medical Systems, Inc.
First Request for Production*

9. All documents that refer or relate to training provided to DeSoto employees and/or agents on the use of the Medical Equipment.

Response: Defendants object to this request because it is requesting information that should be in the control and possession of Toshiba America Medical Systems, Inc., who conducted the medical equipment training. Without waiving these objections, the general objections or any other objections, Defendants have produced documents responsive to this Request which have not been previously produced by any party in this litigation.

10. All documents that refer or relate to the loss of referrals to DeSoto based on the alleged failure of the Medical Equipment to operate as warranted.

Response: Defendants are not aware of any documents responsive to the request. Pleading affirmatively, Defendants state that when physicians and medical groups stop referring patients they typically do not send letters of explanation or make phone calls, but rather, they simply refer their patients elsewhere.

11. All documents that refer or relate to the servicing of the Medical Equipment.

Response: Defendants object to this request to the extent that it seeks information that has already been produced in litigation, and information that should be in the control and possession of Toshiba America Medical Systems, Inc., who administered or oversaw service on the Medical Equipment. Without waiving these objections, the general objections or any other objections, Defendants have produced documents responsive to this Request which have not been previously produced by any party in this litigation.

*Defendants' Response to
Toshiba America Medical Systems, Inc.
First Request for Production*

12. All documents that refer or relate to the two separate incidents in which the medical Equipment allegedly malfunctioned and caused injury to your patients as alleged in paragraph 33 of your Crossclaim.

Response: Defendants are not aware of any information that would be responsive to this request in that Defendants did not draft or file a Crossclaim in this matter. If Plaintiff/Intervenor Toshiba America Medical Systems, Inc. resubmits this request, an attempt would be made to provide the information requested.

13. All documents that refer or relate to the removal of the Medical Equipment from your premises prior to the end of the term of the Master Lease.

Response: Defendants deny that the Master Lease is a legally binding agreement and object to this request to the extent that it seeks information that has already been produced in litigation, and information that should be in the control and possession of Toshiba America Medical Systems, Inc., who administered or oversaw the removal of the Medical Equipment. Without waiving these objections, the general objections or any other objections, Defendants have produced documents responsive to this Request which have not been previously produced by any party in this litigation.

14. All federal and state income tax returns, together with all schedules or attachments, filed on behalf of DeSoto for years 2000, 2001, and 2002.

Response: Defendants object to this request to the extent that it seeks confidential, private, business or commercial information or proprietary information. Without waiving these objections, the general objections or any other objections, Defendants are in the process of

*Defendants' Response to
Toshiba America Medical Systems, Inc.
First Request for Production*

compiling the requested information as it pertains to Defendants' counterclaims and will supplement this request when the information has been compiled.

15. All documents concerning DeSoto's annual financial information for the years 2000, 2001, and 2002, including, but not limited to: (a) DeSoto's annual financial statements; (b) DeSoto's profit and loss statements; and (c) any other annual compilation of DeSoto's financial information.

Response: Defendants object to this request to the extent that it seeks confidential, private, business or commercial information or proprietary information. Without waiving these objections, the general objections or any other objections, Defendants are in the process of compiling the requested information as it pertains to Defendants' counterclaims and will supplement this request when the information has been compiled.

16. All documents that constitute, reflect, refer or relate to communications between DeSoto and TAMS.

Response: Defendants object to this request to the extent that it seeks information that has already been produced in this litigation. Defendants further object to this request because it is requesting information that by its very nature should be in the control and possession of Toshiba America Medical Systems, Inc. Without waiving these objections, the general objections or any other objections, Defendants have produced documents responsive to this Request which have not been previously produced by any party in this litigation.

17. All documents that constitute, reflect, refer or relate to communications between DeSoto and DLL.

*Defendants' Response to
Toshiba America Medical Systems, Inc.
First Request for Production*

Response: Defendants object to this request to the extent that it does not permit the identification of particular documents, subjects and time-frames with sufficient particularity to permit a reasonable response. Defendants also object to this request to the extent that it seeks confidential, private, business or commercial information or proprietary information. Defendants further object to this request to the extent that it seeks information that has already been produced in this litigation. Without waiving these objections, the general objections or any other objections, Defendants have produced documents responsive to this Request which have not been previously produced by any party in this litigation.

18. All documents that constitute, reflect, refer or relate to any communications between or among DeSoto's present or former directors, officers, employees, agents and representatives regarding TAMS and/or the Medical Equipment.

Response: Defendants object to this request to the extent that it seeks confidential, private, business or commercial information or proprietary information. Defendants also object to this request to the extent that it seeks documents protected by the attorney client privilege and the attorney work product doctrine. Finally, Defendants object to this request to the extent that it seeks information that has already been produced in this litigation.

19. All filings (and all documents that refer or relate to any such filings) with the local, state or federal governmental agencies or bodies that refer or relate to TAMS and/or the Medical Equipment.

*Defendants' Response to
Toshiba America Medical Systems, Inc.
First Request for Production*

Response: Defendants object to this request to the extent that it seeks information that has already been produced in this litigation. Defendants further object to this request as this information can be obtained from another source, namely the public record.

20. All requests for payment or reimbursement made to any patient or client or any third party payor, including without limitation private insurers, Medicare and Medicaid for services provided through use of the Medical Equipment.

Response: Defendants object to this request on the grounds that to provide the information requested in the manner requested would be in violation of the Healthcare Insurance Portability and Accountability Act of 1996. Defendants further object to this request to the extent that it seeks confidential, private, business or commercial information or proprietary information.

21. All documents reflecting any decision not to seek payment or reimbursement, in whole or in part, from any patient or client or any third party payor, including without limitation private insurers, Medicare and Medicaid, for services provided through use of the Medical Equipment.

Response: Defendants have no information in their possession that would be responsive to this request in that Defendants are prohibited by law from refusing to seek payment or reimbursement, in whole or in part, from any patient or client or any third party payor, including private insurers, Medicare and Medicaid, for any services provided.

22. All documents that refer or relate to any equipment that DeSoto purchased or leased to replace the functions performed by the Medical Equipment leased by DeSoto from TAMS, including without limitation all documents that refer or relate to the purchasing and/or

*Defendants' Response to
Toshiba America Medical Systems, Inc.
First Request for Production*

leasing of such equipment, any complaints or problems relating to the performance of such equipment, the cost of operating such equipment, the servicing of such equipment, and the revenues generated by the use of such equipment.

Response: Defendants object to this request to the extent that it seeks confidential, private, business or commercial information and proprietary information. Further, Defendants are not aware of any information that would be responsive to that part of this request regarding the revenues generated by the use of such replacement equipment that the information requested is not maintained by the Defendants in the manner requested in the normal course of business and to properly respond to this request within the time allowed under the Federal Rules of Civil Procedure is not possible, but that Defendants are in the process of compiling the requested information that is not objectionable and will supplement their answer when the information has been assembled.

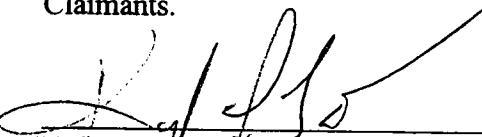
23. All images and x-rays taken by the equipment that DeSoto purchased or leased to replace the functions performed by the Medical Equipment that were adequate in areas that the images and x-rays taken by the Medical Equipment were allegedly defective or of poor quality.

Response: Defendants object to providing the information requested because the information requested is protected under the Healthcare Insurance Portability and Accountability Act of 1996.

*Defendants' Response to
Toshiba America Medical Systems, Inc.
First Request for Production*

Respectfully Submitted,

Desoto Diagnostic Imaging, LLC, Randon J. Carvel, Lynn T. Carvel, Delta Radiology, P.C., Zobar Properties, LLC, Defendants and Counter-Claimants.

By: 

Kyle P. Tate, AR Bar No. 95097
for TATE, RAY, & BRADY
An Association of Professional Corporations
424 Ouachita Avenue
Hot Springs, AR 71901
(501) 624-9900

CERTIFICATE OF SERVICE

The undersigned attorney certifies that the foregoing has been served upon the attorney of record for all other parties in this proceeding and upon parties not represented by attorneys by telefax or by delivering a copy of this pleading to the attorney or party personally, or to the offices of such attorney or party, or by placing a copy in the U.S. Mail addressed to such attorney or party named below at his office with sufficient prepaid postage on this 14th day of April, 2003.

Ms. Rosetta B. Packer
MCCARTER & ENGLISH, LLP
Mellon Bank Center, Suite 700
1735 Market Street
Philadelphia, PA 19103-7501

Mr. John Chesney
Ms. Julianne Peck
DRINKER BIDDLE & REATH, LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996


Kyle P. Tate

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DELAGE LANDEN FINANCIAL
SERVICES, INC.,

Plaintiff,

CIVIL ACTION NO. 2:02CV2810

TOSHIBA AMERICA MEDICAL
SYSTEMS, INC.

Plaintiff/Intervenor,

v.

DESO TO DIAGNOSTIC IMAGING, LLC,
RANDON J. CARVEL, LYNN T. CARVEL,
DELTA RADIOLOGY, P.C. and
ZOBAR PROPERTIES, LLC

Defendants and Counter-
Claimants

**FIRST SUPPLEMENTAL RESPONSE TO FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS PROPOUNDED BY TOSHIBA AMERICA MEDICAL SYSTEMS, INC.**

NOW COME the Defendants, Desoto Diagnostic Imaging, LLC, Randon J. Carvel, Lynn T. Carvel, Delta Radiology, P.C. and Zobar Properties, LLC, by and through their attorneys, TATE LAW FIRM, by the undersigned attorney, do hereby submit their First Supplemental Response to First Request for Production of Documents Propounded by Toshiba America Medical Systems, Inc. Defendants also reserve their right to amend and/or supplement their responses at any time in the future.

GENERAL OBJECTIONS

1. Defendants object to Plaintiff/Intervenor's instructions and definitions to the extent that they suggest or require any burdens, responsibilities, or objections beyond those set forth in or

required by the Federal Rules of Civil Procedure. In responding to these requests, Defendants will comply with the applicable provisions of the Federal Rules of Civil Procedure.

2. Defendants object to any discovery directed at information protected by the attorney work product doctrine, the attorney-client privilege or any other applicable privilege. Defendants further object to any discovery which seeks information that is private, confidential business or commercial information, trade secrets, confidential research or development or proprietary information.

3. Defendants object to discovery which is not relevant or material and which is not reasonably calculated to lead to the discovery of admissible evidence.

4. Defendants object to discovery which is unduly burdensome, overly broad, vague and/or ambiguous, and not subject to reasonable limitation in time. Defendants further object to discovery which does not permit the identification of particular documents, subjects and time-frames with sufficient particularity to permit a reasonable response.

5. Defendants object to Plaintiff/Intervenor's document requests that request documents from entities or persons other than Defendants or that request documents that are not in the possession, custody or control of the Defendants.

6. Defendants object to Plaintiff/Intervenor's requests for production of documents to the extent they seek documents which have already been produced in this litigation from any person or party or to the extent they seek documents that are publicly available.

7. Each of these general objection is incorporated into each and ever response as though fully set forth at length therein, in addition to any specific objections stated.

8. Defendants reserve the right to supplement their answers.

RESPONSE TO DOCUMENT REQUESTS

1. Any and all documents identified in your answers to TAMS' First Set of Interrogatories to Defendants.

Response: Defendants have produced documents responsive to this Request which have not been previously produced by any party in this litigation. In the event that new responsive documents are discovered, Defendants agree to supplement these responses according to the Federal Rules of Civil Procedure.

2. All documents referenced, viewed, consulted or otherwise used in preparation of your answers to TAMS' First Set of Interrogatories.

Response: Without waiving any previous objections, Defendants have produced documents responsive to this Request which have not been previously produced by any party in this litigation. In the event that new responsive documents are discovered, Defendants agree to supplement these responses according to the Federal Rules of Civil Procedure.

3. Any and all documents and/or tangible things that support or relate to any of the allegations made in the Crossclaim, or which you referred to or relied upon in drafting the Crossclaim.

Response: Defendants have produced documents responsive to this Request which have not been previously produced by any party in this litigation. In the event that new responsive documents are discovered, Defendants agree to supplement these responses according to the Federal Rules of Civil Procedure.

4. All documents that refer or relate to TAMS and/or the Medical Equipment, including but not limited to all documents concerning the Master Lease and Service Agreements.

Response: Defendants have produced documents responsive to this Request which have

not been previously produced by any party in this litigation. In the event that new responsive documents are discovered, Defendants agree to supplement these responses according to the Federal Rules of Civil Procedure.

5. All documents and materials upon which you allegedly relied regarding the performance and reliability of the Medical Equipment prior and subsequent to the execution of the Master Lease, including but not limited to brochures, advertisements, manuals, and promotional materials.

Response: Defendants have produced documents responsive to this Request which have not been previously produced by any party in this litigation. In the event that new responsive documents are discovered, Defendants agree to supplement these responses according to the Federal Rules of Civil Procedure.

6. All images and x-rays taken by the Medical Equipment, including but not limited to all images and x-rays that you contend were defective or of poor quality as a result of alleged failure of the Medical Equipment to perform as warranted.

Response: Without waiving any previous objections, Defendants have produced information responsive to this Request which is designated as "Confidential" pursuant to the Confidentiality Stipulation and Protective Order. In the event that new responsive information is discovered, Defendants agree to supplement these responses according to the Federal Rules of Civil Procedure.

7. All documents that support your contention in paragraph 32 of your Crossclaim that there were "approximately 100 separate incidents" during which the Medical Equipment failed to operate as warranted and failed of its essential purpose.

Response: Defendants have produced documents responsive to this Request which have

not been previously produced by any party in this litigation. In the event that new responsive documents are discovered, Defendants agree to supplement these responses according to the Federal Rules of Civil Procedure.

8. All documents that refer or relate to the use of the Medical Equipment, including without limitation all patient log books and records that reflect such use, and all documents that refer or relate to the revenue generated by such use.

Response: Without waiving any previous objections, Defendants have produced information responsive to this Request which is designated as "Confidential" pursuant to the Confidentiality Stipulation and Protective Order. In the event that new responsive documents are discovered, Defendants agree to supplement these responses according to the Federal Rules of Civil Procedure.

9. All documents that refer or relate to training provided to DeSoto employees and/or agents on the use of the Medical Equipment.

Response: Without waiving any previous objections, Defendants are unaware of any documents responsive to this request. In the event that new responsive information is discovered, Defendants agree to supplement these responses according to the Federal Rules of Civil Procedure.

10. All documents that refer or relate to the loss of referrals to DeSoto based on the alleged failure of the Medical Equipment to operate as warranted.

Response: Defendants reiterate its previous response that Defendants are unaware of any such documents in its possession. In the event that new responsive information is discovered, Defendants agree to supplement these responses according to the Federal Rules of Civil Procedure.

11. All documents that refer or relate to the servicing of the Medical Equipment.

Response: Without waiving any previous objections, Defendants have produced

documents responsive to this Request which have not been previously produced by any party in this litigation. In the event that new responsive documents are discovered, Defendants agree to supplement these responses according to the Federal Rules of Civil Procedure.

12. All documents that refer or relate to the two separate incidents in which the medical Equipment allegedly malfunctioned and caused injury to your patients as alleged in paragraph 33 of your Crossclaim.

Response: Defendants have produced documents responsive to this Request which have not been previously produced by any party in this litigation. In the event that new responsive documents are discovered, Defendants agree to supplement these responses according to the Federal Rules of Civil Procedure.

13. All documents that refer or relate to the removal of the Medical Equipment from your premises prior to the end of the term of the Master Lease.

Response: Without waiving any previous objections, Defendants state that DeSoto did not oversee the removal of the equipment from its operating location. As previously disclosed, DeSoto hired professionals to deinstall the equipment, (Bullit, Inc. and Oxford Instruments), and from there TAMS removed the equipment from the facility. Defendants are not aware of any documents relating to the removal of the equipment, as TAMS oversaw the removal of the equipment.

14. All federal and state income tax returns, together with all schedules or attachments, filed on behalf of DeSoto for years 2000, 2001, and 2002.

Response: Without waiving any previous objections Defendants have produced documents responsive to this Request which are designated as "Confidential" pursuant to the Confidentiality Stipulation and Protective Order.

15. All documents concerning DeSoto's annual financial information for the years 2000, 2001, and 2002, including, but not limited to: (a) DeSoto's annual financial statements; (b) DeSoto's profit and loss statements; and (c) any other annual compilation of DeSoto's financial information.

Response: Defendants object to this request on the grounds that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Further, Defendants renew their objection to this request to the extent that it seeks confidential, private, business or commercial information or proprietary information. Without waiving these objections, Defendants state that DeSoto has disclosed its certified tax returns which provide an annual compilation of DeSoto's financial information.

16. All documents that constitute, reflect, refer or relate to communications between DeSoto and TAMS.

Response: Without waiving any previous objections, Defendants have produced documents responsive to this Request. In the event that additional responsive documents are discovered, Defendants agree to supplement these responses according to the Federal Rules of Civil Procedure.

17. All documents that constitute, reflect, refer or relate to communications between DeSoto and DLL.

Response: Without waiving any previous objections, Defendants have produced documents responsive to this Request. In the event that additional responsive documents are discovered, Defendants agree to supplement these responses according to the Federal Rules of Civil Procedure.

18. All documents that constitute, reflect, refer or relate to any communications between

or among DeSoto's present or former directors, officers, employees, agents and representatives regarding TAMS and/or the Medical Equipment.

Response: Without waiving any previous objections, Defendants have produced documents responsive to this Request and supplement as attached hereto. In the event that additional responsive documents are discovered, Defendants agree to supplement these responses according to the Federal Rules of Civil Procedure.

19. All filings (and all documents that refer or relate to any such filings) with the local, state or federal governmental agencies or bodies that refer or relate to TAMS and/or the Medical Equipment.

Response: Without waiving any previous objections, Defendants are unaware of any documents responsive to this request, other than those responsive documents that have already been provided. In the event that new responsive documents are discovered, Defendants agree to supplement these responses according to the Federal Rules of Civil Procedure.

20. All requests for payment or reimbursement made to any patient or client or any third party payor, including without limitation private insurers, Medicare and Medicaid for services provided through use of the Medical Equipment.

Response: Without waiving any previous objections, Defendants have produced documents responsive to this Request and which are designated as "Confidential" pursuant to the Confidentiality Stipulation and Protective Order. In the event that additional responsive documents are discovered, Defendants agree to supplement these responses according to the Federal Rules of Civil Procedure.

22. All documents that refer or relate to any equipment that DeSoto purchased or leased

to replace the functions performed by the Medical Equipment leased by DeSoto from TAMS, including without limitation all documents that refer or relate to the purchasing and/or leasing of such equipment, any complaints or problems relating to the performance of such equipment, the cost of operating such equipment, the servicing of such equipment, and the revenues generated by the use of such equipment.

Response: Without waiving any previous objections, Defendants have produced documents responsive to this Request which are designated as "Confidential" pursuant to the Confidentiality Stipulation and Protective Order.

23. All images and x-rays taken by the equipment that DeSoto purchased or leased to replace the functions performed by the Medical Equipment that were adequate in areas that the images and x-rays taken by the Medical Equipment were allegedly defective or of poor quality.

Response: Without waiving any previous objections, Defendants will produce responsive documents as soon as practicable considering the time-consuming and burdensome nature of the process and which are designated as "Confidential" pursuant to the Confidentiality Stipulation and Protective Order.

By:

Kyle P. Tate/hb

Kyle P. Tate
for TATE LAW FIRM
9085 Sandidge Center Cove
Olive Branch, MS 38654
(662) 893-8833
(662) 893-8824 facsimile

CERTIFICATE OF SERVICE

The undersigned attorney certifies that the foregoing has been served upon the attorney of record for all other parties in this proceeding and upon parties not represented by attorneys by telefax or by delivering a copy of this pleading to the attorney or party personally, or to the offices of such attorney or party, or by placing a copy in the U.S. Mail addressed to such attorney or party named below at his office with sufficient prepaid postage on this 29 day of October, 2003.

Mr. John Chesney
Ms. Julianne Peck
DRINKER BIDDLE & REATH, LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996

Ms. Rosetta B. Packer
MCCARTER & ENGLISH, LLP
Mellon Bank Center, Suite 700
1735 Market Street
Philadelphia, PA 19103-7501

Kyle P. Tate / hb

Kyle P. Tate

Exhibit D

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DELADE LANDEN FINANCIAL
SERVICES, INC.,

Plaintiff,

CIVIL ACTION NO. 2:02CV2810

TOSHIBA AMERICA MEDICAL
SYSTEMS, INC.

Plaintiff/Intervenor,

v.

DESOTO DIAGNOSTIC IMAGING, LLC,
RANDON J. CARVEL, LYNN T. CARVEL,
DELTA RADIOLOGY, P.C. and
ZOBAR PROPERTIES, LLC

Defendants and Counter-
Claimants

OBJECTIONS TO SECOND SET OF INTERROGATORIES
PROPOUNDED BY TOSHIBA AMERICA MEDICAL SYSTEMS, INC.

NOW COME the Defendants, Desoto Diagnostic Imaging, LLC, Randon J. Carvel, Lynn T. Carvel, Delta Radiology, P.C. and Zobar Properties, LLC, by and through their attorneys, TATE LAW FIRM, by Kyle P. Tate, and for their Response to Second Set of Interrogatories Propounded by Toshiba America Medical Systems, Inc. do hereby state and answer:

GENERAL OBJECTIONS

1. Defendants object to Plaintiff/Intervenor's instructions and definitions to the extent that they suggest or require any burdens, responsibilities, or objections beyond those set forth in or required by the Federal Rules of Civil Procedure. In responding to these requests, Defendants will comply with the applicable provisions of the Federal Rules of Civil Procedure.

2. Defendants object to any discovery directed at information protected by the attorney work product doctrine, the attorney-client privilege or any other applicable privilege. Defendants further object to any discovery which seeks information that is private, confidential business or commercial information, trade secrets, confidential research or development or proprietary information.

3. Defendants object to discovery which is not relevant or material and which is not reasonable calculated to lead to the discovery of proprietary information.

4. Defendants object to discovery which is unduly burdensome, overly broad, vague and/or ambiguous, and not subject to reasonable limitation in time. Defendants further object to discovery which does not permit the identification of particular documents, subjects and time-frames with sufficient particularity to permit a reasonable response.

5. DEFENDANTS OBJECT TO DISCOVERY BEYOND THAT WHICH IS ALLOWED BY RULE 33 OF THE FEDERAL RULES OF CIVIL PROCEDURE WHICH LIMITS WRITTEN INTERROGATORIES TO 25 IN NUMBER, INCLUDING ALL DISCRETE SUBPARTS.

6. Each of these general objections is incorporated into each and every response as though fully set forth at length therein, in addition to any specific objections stated.

7. Defendants reserve the right to supplement their answers.

ANSWERS TO INTERROGATORIES

1. For each piece of equipment that DeSoto leased or purchased to replace the functions performed by the Medical Equipment leased by DeSoto under the Master Lease, identify and describe in detail the capabilities, specifications, and features of said equipment.

Response: Without waiving any previous or foregoing objections, Defendants object to discovery beyond that which is allowed by Rule 33 of the Federal Rules of Civil Procedure which limits written interrogatories to 25 in number, including all discrete subparts. This Interrogatory goes beyond that which is allowed by the Federal Rules of Civil Procedure absent leave of Court or party stipulation, neither of which have occurred.

Defendants further object to this Interrogatory on the grounds that it is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

2. For each piece of equipment that DeSoto leased or purchased to replace the functions performed by the Medical Equipment leased by DeSoto under the Master Lease, identify and describe in detail all representations and/or warranties made by any party as to the capabilities, specifications, features, image quality and/or performance of said equipment.

Response: Without waiving any previous or foregoing objections, Defendants object to discovery beyond that which is allowed by Rule 33 of the Federal Rules of Civil Procedure which limits written interrogatories to 25 in number, including all discrete subparts. This Interrogatory goes beyond that which is allowed by the Federal Rules of Civil Procedure absent leave of Court or party stipulation, neither of which have occurred.

Defendants further object to this Interrogatory on the grounds that it is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

3. For each piece of equipment that DeSoto leased or purchased to replace the functions performed by the Medical Equipment leased by DeSoto under the Master Lease,

identify the date(s) that you contracted to purchase or lease said equipment and the date(s) that said equipment was installed in DeSoto's facilities.

Response: Without waiving any previous or foregoing objections, Defendants object to discovery beyond that which is allowed by Rule 33 of the Federal Rules of Civil Procedure which limits written interrogatories to 25 in number, including all discrete subparts. This Interrogatory goes beyond that which is allowed by the Federal Rules of Civil Procedure absent leave of Court or party stipulation, neither of which have occurred.

Defendants further object to this Interrogatory on the grounds that it is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

4. Identify and describe in detail every complaint made by you to the manufacturer, vendor, seller, or lessor regarding the performance and/or reliability of the equipment that DeSoto leased or purchased to replace the functions performed by the Medical Equipment leased by DeSoto under the Master Lease. For each such complaint identified, please provide the following information:

- a. the date and time of the complaint;
- b. the person who made the complaint;
- c. the person and/or entity to whom the complaint was made;
- d. the piece of equipment forming the basis of the complaint; and
- e. the content of the complaint.

Response: Without waiving any previous or foregoing objections, Defendants object to discovery beyond that which is allowed by Rule 33 of the Federal Rules of Civil Procedure which limits written interrogatories to 25 in number, including all discrete subparts. This

Interrogatory goes beyond that which is allowed by the Federal Rules of Civil Procedure absent leave of Court or party stipulation, neither of which have occurred.

Defendants further object to this Interrogatory on the grounds that it is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

5. Identify and describe in detail every complaint made by you to any party responsible for servicing or maintaining the equipment purchased and/or leased to replace the functions performed by the Medical Equipment leased by DeSoto under the Master Lease. For each such complaint identified, please provide the following information:

- a. the date and time of the complaint;
- b. the person who made the complaint;
- c. the person and/or entity to whom the complaint was made;
- d. the piece of equipment forming the basis of the complaint; and
- e. the content of the compliant.

Response: Without waiving any previous or foregoing objections, Defendants object to discovery beyond that which is allowed by Rule 33 of the Federal Rules of Civil Procedure which limits written interrogatories to 25 in number, including all discrete subparts. This Interrogatory goes beyond that which is allowed by the Federal Rules of Civil Procedure absent leave of Court or party stipulation, neither of which have occurred.

Defendants further object to this Interrogatory on the grounds that it is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

6. For each piece of equipment that DeSoto leased or purchased to replace the functions performed by the Medical Equipment leased by DeSoto under the Master Lease, state whether or not you have paid all fees and/or monies due under any contractual agreement with any party in connection with the sale and/or lease as well as the servicing and/or maintenance of said equipment. If you have failed to pay any fees as described above, please provide the following information:

- a. the amount of the fee(s) owed by you;
- b. to whom the fee(s) are owed;
- c. the reasons for the fee(s); and
- d. the reason for your failure to pay the fee(s).

Response: Without waiving any previous or foregoing objections, Defendants object to discovery beyond that which is allowed by Rule 33 of the Federal Rules of Civil Procedure which limits written interrogatories to 25 in number, including all discrete subparts. This Interrogatory goes beyond that which is allowed by the Federal Rules of Civil Procedure absent leave of Court or party stipulation, neither of which have occurred.

Defendants further object to this Interrogatory on the grounds that it is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

7. Identify and describe in detail each and every express written or oral warranty or representation made by TAMS regarding the performance and reliability of each piece of Medical Equipment leased by DeSoto under the Master Lease. For each warranty or representation identified, please provide the following information:

- a. the date and time of the warranty or representation;

- b. the person who made the warranty or representation;
- c. to whom the warranty or representation was made;
- d. the specific piece of Medical Equipment referenced in the warranty or representation; and
- e. the content of the warranty or representation.

Response: Without waiving any previous or foregoing objections, Defendants object to discovery beyond that which is allowed by Rule 33 of the Federal Rules of Civil Procedure which limits written interrogatories to 25 in number, including all discrete subparts. This Interrogatory goes beyond that which is allowed by the Federal Rules of Civil Procedure absent leave of Court or party stipulation, neither of which have occurred.

Defendants further object to this Interrogatory as unreasonably cumulative or duplicative in that it appears to seek the same information sought in Interrogatory No. 7 in the First Set of Interrogatories Propounded by Toshiba America Medical Systems, Inc., which has previously been answered and supplemented by the Defendants. Further, it would be extremely burdensome for Defendants to list "each and every express written or oral warranty or representation" when responsive information has been provided in hundred of pages of deposition testimony taken thus far.

8. For each piece of equipment that DeSoto leased or purchased to replace the functions performed by the Medical Equipment leased by DeSoto under the Master Lease, identify and describe in detail each area where said equipment exceeds the capabilities, specifications, performance and features of the Medical Equipment leased by DeSoto under the Master Lease.

Response: Without waiving any previous or foregoing objections, Defendants object to discovery beyond that which is allowed by Rule 33 of the Federal Rules of Civil Procedure which limits written interrogatories to 25 in number, including all discrete subparts. This Interrogatory goes beyond that which is allowed by the Federal Rules of Civil Procedure absent leave of Court or party stipulation, neither of which have occurred.

Defendants further object to this Interrogatory on the grounds that it is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

9. State the number of times during each calendar year that each piece of Medical Equipment was used for diagnostic purposes.

Response: Defendants object to discovery beyond that which is allowed by Rule 33 of the Federal Rules of Civil Procedure which limits written interrogatories to 25 in number, including all discrete subparts. This Interrogatory goes beyond that which is allowed by the Federal Rules of Civil Procedure absent leave of Court or party stipulation, neither of which have occurred.

Without waiving any previous or foregoing objections, Defendants have produced responsive information which is designated as "Confidential" pursuant to the Confidentiality Stipulation and Protective Order.

10. Identify and describe in detail each and every instance where the Medical Equipment did not perform in accordance with the express oral and written warranties and representations made by TAMS identified in Interrogatory No. 7 above. The purpose of this Interrogatory is to identify each and every instance where the Medical Equipment did not perform as allegedly warranted by TAMS.

Response: Defendants object to discovery beyond that which is allowed by Rule 33 of the Federal Rules of Civil Procedure which limits written interrogatories to 25 in number, including all discrete subparts. This Interrogatory goes beyond that which is allowed by the Federal Rules of Civil Procedure absent leave of Court or party stipulation, neither of which have occurred.

Defendants further object to this Interrogatory as attempting to obtain an expert opinion which is not yet due in this case. Without waiving any previous or foregoing objections, Defendants have produced responsive information which is designated as "Confidential" pursuant to the Confidentiality Stipulation and Protective Order.

11. Identify and describe in detail each and every instance where the Medical Equipment did not perform in accordance with the specifications and features set forth in the operating manuals for said equipment, allegedly provided to you by TAMS as described in paragraph 22 of your Counterclaim.

Response: Defendants object to discovery beyond that which is allowed by Rule 33 of the Federal Rules of Civil Procedure which limits written interrogatories to 25 in number, including all discrete subparts. This Interrogatory goes beyond that which is allowed by the Federal Rules of Civil Procedure absent leave of Court or party stipulation, neither of which have occurred.

Defendants further object to this Interrogatory as attempting to obtain an expert opinion which is not yet due in this case. Without waiving any previous or foregoing objections, Defendants state that at the same time TAMS removed the Medical Equipment, all operating manuals for said equipment were also removed, and said manuals have been in the possession and control of TAMS since that time. Not until on or about September 18, 2003 did Defendants

receive revised versions of operating manuals for said equipment, which do not represent the original versions in effect during the relevant period of time, and which hinder Defendants' expert's ability to provide a complete expert opinion.

12. With respect to the "serious deficiencies" of the Medical Equipment as alleged in paragraph 27 of your Counterclaim, describe in detail: (1) how TAMS' service and maintenance technicians failed to alleviate said deficiencies; and (2) anything the aforementioned technicians should have done by way of servicing the Medical Equipment properly to alleviate said deficiencies.

Response: Defendants object to discovery beyond that which is allowed by Rule 33 of the Federal Rules of Civil Procedure which limits written interrogatories to 25 in number, including all discrete subparts. This Interrogatory goes beyond that which is allowed by the Federal Rules of Civil Procedure absent leave of Court or party stipulation, neither of which have occurred.

Defendants further object to this Interrogatory as attempting to obtain an expert opinion which is not yet due in this case. Without waiving any previous or foregoing objections, Defendants state that at the same time TAMS removed the Medical Equipment, all operating manuals for said equipment were also removed, and said manuals have been in the possession and control of TAMS since that time. Not until on or about September 18, 2003 did Defendants receive revised versions of operating manuals for said equipment, which do not represent the original versions in effect during the relevant period of time, and which hinder Defendants' expert's ability to provide a complete expert opinion.

13. Identify and describe in detail all of the "approximately 100 separate incidents" during which the Medical Equipment allegedly failed to operate as warranted and failed of its

essential purpose as alleged in paragraph 32 of your Counterclaim. In addition to describing in detail each incident, please provide the following information:

- a. the date of such incident;
- b. the Medical Equipment involved in the incident;
- c. the technician or technicians operating the Medical Equipment at the time of the incident; and
- d. the problem with the Medical Equipment or reason it failed to allegedly operate as warranted.

Response: Without waiving any previous or foregoing objections, Defendants object to discovery beyond that which is allowed by Rule 33 of the Federal Rules of Civil Procedure which limits written interrogatories to 25 in number, including all discrete subparts. This Interrogatory goes beyond that which is allowed by the Federal Rules of Civil Procedure absent leave of Court or party stipulation, neither of which have occurred.

Defendants further object to this Interrogatory as unreasonably cumulative or duplicative in that it appears to call for the compilation of information previously produced by Intervenor/Plaintiff Toshiba America Medical Services, Inc., (see TAMS 800 – TAMS 910).

14. Do you contend that the technicians employed by you received training from you to operate the Medical Equipment? If your answer is in the positive, describe in detail all training programs offered by you to your technicians.

Response: Defendants object to discovery beyond that which is allowed by Rule 33 of the Federal Rules of Civil Procedure which limits written interrogatories to 25 in number, including all discrete subparts. This Interrogatory goes beyond that which is allowed by the

Federal Rules of Civil Procedure absent leave of Court or party stipulation, neither of which have occurred.

Defendants further object to this Interrogatory on the grounds that it is an improper contention-style interrogatory which seeks a legal conclusions and/or analysis which is beyond the scope of permissible discovery.

15. Identify, quantify and describe in detail all damages DeSoto has allegedly incurred, including actual, incidental and consequential damages, punitive damages, attorney's fees, costs and any other component of damages.

Response: Without waiving any previous or foregoing objections, Defendants object to discovery beyond that which is allowed by Rule 33 of the Federal Rules of Civil Procedure which limits written interrogatories to 25 in number, including all discrete subparts. This Interrogatory goes beyond that which is allowed by the Federal Rules of Civil Procedure absent leave of Court or party stipulation, neither of which have occurred.

Defendants further object to this Interrogatory to the extent, as framed, it should be interpreted as calling for information protected by the attorney-client privilege. Without waiving any previous or foregoing objections, Defendants agree to supplement this response as to all counterclaims as set forth in Defendants' First Amended Affirmative Defenses and First Amended Counterclaims as the Federal Rules of Civil Procedure require.

By: Kyle P. Tate / hb
Kyle P. Tate, AR Bar No. 95097
for TATE LAW FIRM
9085 Sandidge Center Cove
Olive Branch, MS 38654
(662) 893-8833
(662) 893-8824 facsimile

CERTIFICATE OF SERVICE

The undersigned attorney certifies that the foregoing has been served upon the attorney of record for all other parties in this proceeding and upon parties not represented by attorneys by telefax or by delivering a copy of this pleading to the attorney or party personally, or to the offices of such attorney or party, or by placing a copy in the U.S. Mail addressed to such attorney or party named below at his office with sufficient prepaid postage on this 2nd day of October, 2003.

Mr. John Chesney
Ms. Julianne Peck
DRINKER BIDDLE & REATH, LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996

Mr. Peter Boyer
Ms. Rosetta Packer
MCCARTER & ENGLISH, LLP
Mellon Bank Center, Suite 700
1735 Market Street
Philadelphia, PA 19103-7501

Kyle P. Tate / hb
Kyle P. Tate

VERIFICATION

Lynn T. Carvel, M.D., Chief Manager of DeSoto Diagnostic Imaging, LLC, Defendant, states upon oath that she has read the statements contained in the foregoing Responses to TAMS' Interrogatories and they are true and correct to the best of her knowledge and belief.


LYNN T. CARVEL, M.D., Chief Manager

Exhibit E

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DELADE LANDEN FINANCIAL
SERVICES, INC.,

CIVIL ACTION NO. 2:02CV2810

Plaintiff,

TOSHIBA AMERICA MEDICAL
SYSTEMS, INC.

HON. RONALD J. BUCKWALTER

Plaintiff/Intervenor,

v.

DESOTO DIAGNOSTIC IMAGING, LLC.,
RANDON J. CARVEL, LYNN T. CARVEL,
DELTA RADIOLOGY, P.C. and
ZOBAR PROPERTIES, LLC.

Defendants and Counter-
Claimants.

**RESPONSES TO TAMS' SECOND REQUEST FOR
PRODUCTION OF DOCUMENTS ADDRESSED TO DEFENDANTS**

NOW COME the Defendants, Desoto Diagnostic Imaging, LLC, Randon J. Carvel, Lynn T. Carvel, Delta Radiology, P.C. and Zobar Properties, LLC, by and through their attorneys, TATE LAW FIRM by Holly E. Brady, and hereby submit their Responses to TAMS' Second Request for Production of Documents Addressed to Defendants. Defendants also reserve their right to amend and/or supplement their responses at any time in the future.

GENERAL OBJECTIONS

1. Defendants object to Plaintiff/Intervenor's instructions and definitions to the extent that they suggest or require any burdens, responsibilities, or objections beyond those set forth in or required by the Federal Rules of Civil Procedure. In responding to these requests, Defendants will comply with the applicable provisions of the Federal Rules of Civil Procedure.

*Defendant's Response to TAMS'
Second Request for Production*

2. Defendants object to any discovery directed at information protected by the attorney work product doctrine, the attorney-client privilege or any other applicable privilege. Defendants further object to any discovery which seeks information that is private, confidential business or commercial information, trade secrets, confidential research or development or proprietary information.

3. Defendants object to discovery which is not relevant or material and which is not reasonably calculated to lead to the discovery of admissible evidence.

4. Defendants object to discovery which is unduly burdensome, overly broad, vague and/or ambiguous, and not subject to reasonable limitation in time. Defendants further object to discovery which does not permit the identification of particular documents, subjects and time-frames with sufficient particularity to permit a reasonable response.

5. Defendants object to Plaintiff/Intervenor's document requests that request documents from entities or persons other than Defendants or that request documents that are not in the possession, custody or control of the Defendants.

6. Defendants object to Plaintiff/Intervenor's requests for production of documents to the extent they seek documents which have already been produced in this litigation from any person or party or to the extent they seek documents that are publicly available.

7. Each of these general objection is incorporated into each and ever response as though fully set forth at length therein, in addition to any specific objections stated.

8. Defendants reserve the right to supplement their answers.

*Defendant's Response to TAMS'
Second Request for Production*

RESPONSE TO DOCUMENT REQUESTS

1. All documents that refer or relate to all forms of training given by DeSoto to all technicians who operated the Medical Equipment identified by DeSoto in its responses to TAMS' First Set of Interrogatories.

Response: Defendants are currently aware of only those documents that have been previously disclosed by the Parties in the matter. Defendants agree to supplement this request pursuant to the Federal Rules of Civil Procedure should they find any other documents relating to this request.

2. The personnel files for all of the technicians identified by DeSoto in its responses to TAMS' First Set of Interrogatories.

Response: Objection. Defendants object to this request on the grounds that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Further, Defendants object to this request to the extent that it seeks confidential, private, business or commercial information and proprietary information. Defendants also object to this request to the extent that it seeks documents protected by the attorney client privilege and the attorney work product doctrine. However, Defendants agree to produce such documents subject to the Confidentiality Stipulation and Protective Order and the redacting of certain information that may be deemed confidential pursuant to the laws of the States of Mississippi and Tennessee, including, but not limited to, the employees social security number, rate of pay and identifying medical information.

*Defendant's Response to TAMS'
Second Request for Production*

3. All documents sufficient to identify the start and end dates of the employment terms of all of the technicians identified by DeSoto in its responses to TAMS' First Set of Interrogatories.

Response: Please see Response to Request for Production No. 2.

4. The personnel file of Paul King.

Response: Objection. Defendants object to this request on the grounds that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant information. Further, Defendants object to this request to the extent that it seeks confidential, private, business or commercial information and proprietary information. Defendants also object to this request to the extent that it seeks documents protected by the attorney client privilege and the attorney work product doctrine. However, Defendants agree to produce such documents subject to the Confidentiality Stipulation and Protective Order and the redacting of certain information that may be deemed confidential pursuant to the laws of the States of Mississippi and Tennessee, including, but not limited to, the employees social security number, rate of pay and identifying medical information.

5. All documents that reflect, refer or relate to any representations and/or warranties made by any party as to the capabilities, specifications, features, image quality and/or performance of the equipment that DeSoto leased or purchased to replace the functions performed by the Medical Equipment leased by DeSoto under the Master Lease.

Response: Defendants agree to produce all such documents in their possession.

*Defendant's Response to TAMS'
Second Request for Production*

6. All documents that constitute, reflect, refer or relate to all promotional and/or marketing materials, brochures, specification sheets, manual and user's guides received by you in connection with the equipment that DeSoto leased or purchased to replace the function performed by the Medical Equipment leased by DeSoto under the Master Lease.

Response: Defendants agree to produce all such documents in their possession.

7. All images in your possession that were created by the Medical Equipment that you claim were in any sense non-diagnostic or substandard so as to be in violation of any claimed obligation, warranty or representation of TAMS or so as to reflect a failure by any piece of Medical Equipment to conform to or to perform in accordance with its specifications.

Response: Objection. Defendants object to this Request on the grounds that it is overly broad and unduly burdensome. Further, Defendants object to this Request to the extent that it seeks information that is protected by the physician patient privilege and to infringe upon this privilege would be a breach of patient confidentiality.

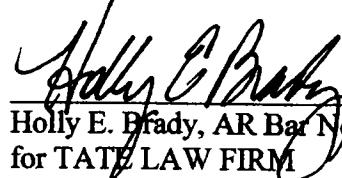
8. All documents that refer or relate to the number of times each piece of Medical Equipment was used for diagnostic purposes.

Response: Objection. Defendants object to this request on the grounds that it is overly broad and unduly burdensome. However, although this information is not held in the normal course of business Defendants would agree to compile this information upon TAMS' agreement to cover the expenses of which it would cost Dr. Carvel and her staff to make such compilations.

*Defendant's Response to TAMS'
Second Request for Production*

Respectfully Submitted,

By:

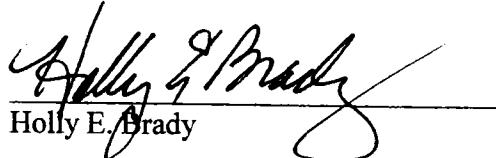

Holly E. Brady, AR Bar No. 2001160
for TATE LAW FIRM
424 Ouachita Avenue
Hot Springs, AR 71901
(501) 624-9900

CERTIFICATE OF SERVICE

The undersigned attorney certifies that the foregoing has been served upon the attorney of record for all other parties in this proceeding and upon parties not represented by attorneys by telefax or by delivering a copy of this pleading to the attorney or party personally, or to the offices of such attorney or party, or by placing a copy in the U.S. Mail addressed to such attorney or party named below at his office with sufficient prepaid postage on this 23rd day of July, 2003.

Ms. Rosetta B. Packer
MCCARTER & ENGLISH, LLP
Mellon Bank Center, Suite 700
1735 Market Street
Philadelphia, PA 19103-7501

Mr. John Chesney
Ms. Julianne Peck
DRINKER BIDDLE & REATH, LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996


Holly E. Brady

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DELADE LANDEN FINANCIAL SERVICES, INC.,	:	
	:	CIVIL ACTION NO. 2:02CV2810
Plaintiff,	:	
TOSHIBA AMERICA MEDICAL SYSTEMS, INC.	:	
	:	
Plaintiff/Intervenor,	:	
	:	
v.	:	
DESOTO DIAGNOSTIC IMAGING, LLC, RANDON J. CARVEL, LYNN T. CARVEL, DELTA RADIOLOGY, P.C. and ZOBAR PROPERTIES, LLC	:	
	:	
Defendants and Counter- Claimants	:	
	:	

**FIRST SUPPLEMENTAL RESPONSE TO SECOND REQUEST FOR PRODUCTION
OF DOCUMENTS PROPUndED BY TOSHIBA AMERICA MEDICAL SYSTEMS, INC.**

NOW COME the Defendants, Desoto Diagnostic Imaging, LLC, Randon J. Carvel, Lynn T. Carvel, Delta Radiology, P.C. and Zobar Properties, LLC, by and through their attorneys, TATE LAW FIRM by the undersigned attorney, and hereby submit their First Supplemental Responses to Second Request for Production of Documents Propounded by Toshiba America Medical Systems, Inc. Defendants also reserve their right to amend and/or supplement their responses at any time in the future.

GENERAL OBJECTIONS

1. Defendants object to Plaintiff/Intervenor's instructions and definitions to the extent that they suggest or require any burdens, responsibilities, or objections beyond those set forth in or

required by the Federal Rules of Civil Procedure. In responding to these requests, Defendants will comply with the applicable provisions of the Federal Rules of Civil Procedure.

2. Defendants object to any discovery directed at information protected by the attorney work product doctrine, the attorney-client privilege or any other applicable privilege. Defendants further object to any discovery which seeks information that is private, confidential business or commercial information, trade secrets, confidential research or development or proprietary information.

3. Defendants object to discovery which is not relevant or material and which is not reasonably calculated to lead to the discovery of admissible evidence.

responsible for leading to the discovery of significant evidence

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Defendents object to discovery of this information.

commercial research or development or biography, to assess and to evaluate the effectiveness of the new doctrine, the author-client may also use other methods of evaluation.

5. Information protected by attorney-client privilege and work product privilege is to be discovered directly at the request of the Federal Bureau of Investigation or the U.S. Attorney's Office.

in response to these requests, the Bureau will determine whether to issue a Civil Protective Order.

required by the Federal Rules of Civil Procedure. In responding to these requests, Defendants will comply with the applicable provisions of the Federal Rules of Civil Procedure.

2. Defendants object to any discovery directed at information protected by the attorney work product doctrine, the attorney-client privilege or any other applicable privilege. Defendants further object to any discovery which seeks information that is private, confidential business or commercial information, trade secrets, confidential research or development or proprietary information.

3. Defendants object to discovery which is not relevant or material and which is not reasonably calculated to lead to the discovery of admissible evidence.

4. Defendants object to discovery which is unduly burdensome, overly broad, vague and/or ambiguous, and not subject to reasonable limitation in time. Defendants further object to discovery which does not permit the identification of particular documents, subjects and time-frames with sufficient particularity to permit a reasonable response.

5. Defendants object to Plaintiff/Intervenor's document requests that request documents from entities or persons other than Defendants or that request documents that are not in the possession, custody or control of the Defendants.

6. Defendants object to Plaintiff/Intervenor's requests for production of documents to the extent they seek documents which have already been produced in this litigation from any person or party or to the extent they seek documents that are publicly available.

7. Each of these general objection is incorporated into each and ever response as though fully set forth at length therein, in addition to any specific objections stated.

8. Defendants reserve the right to supplement their answers.

RESPONSE TO DOCUMENT REQUESTS

7. All images in your possession that were created by the Medical Equipment that you claim were in any sense non-diagnostic or substandard so as to be in violation of any claimed obligation, warranty or representation of TAMS or so as to reflect a failure by any piece of Medical Equipment to conform to or to perform in accordance with its specifications.

Response: Without waiving any previous objections, Defendants have produced approximately 180 compact discs containing images which are responsive to this Request and which are designated as "Confidential" pursuant to the Confidentiality Stipulation and Protective Order. In the event that new responsive information is discovered, Defendants agree to supplement these responses according to the Federal Rules of Civil Procedure.

8. All documents that refer or relate to the number of times each piece of Medical Equipment was used for diagnostic purposes.

Response: Without waiving any previous objections, Defendants have produced approximately 180 compact discs containing images which are responsive to this Request and which are designated as "Confidential" pursuant to the Confidentiality Stipulation and Protective Order. In the event that new responsive information is discovered, Defendants agree to supplement these responses according to the Federal Rules of Civil Procedure.

By:

Kyle P. Tate / hb
Kyle P. Tate
for TATE LAW FIRM
9085 Sandidge Center Cove
Olive Branch, MS 38654
(662) 893-8833
(662) 893-8824 facsimile

CERTIFICATE OF SERVICE

The undersigned attorney certifies that the foregoing has been served upon the attorney of record for all other parties in this proceeding and upon parties not represented by attorneys by telefax or by delivering a copy of this pleading to the attorney or party personally, or to the offices of such attorney or party, or by placing a copy in the U.S. Mail addressed to such attorney or party named below at his office with sufficient prepaid postage on this 2nd day of October, 2003.

Mr. John Chesney
Ms. Julianne Peck
DRINKER BIDDLE & REATH, LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996

Ms. Rosetta B. Packer
MCCARTER & ENGLISH, LLP
Mellon Bank Center, Suite 700
1735 Market Street
Philadelphia, PA 19103-7501

Kyle P. Tate / hb
Kyle P. Tate

Exhibit F

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**DELAGE LANDEN FINANCIAL
SERVICES, INC.,**

CIVIL ACTION NO. 2:02CV2810

Plaintiff,

**TOSHIBA AMERICA MEDICAL
SYSTEMS, INC.**

Plaintiff/Intervenor,

v.

**DESOTO DIAGNOSTIC IMAGING, LLC,
RANDON J. CARVEL, LYNN T. CARVEL,
DELTA RADIOLOGY, P.C. and
ZOBAR PROPERTIES, LLC**

**Defendants and Counter-
Claimants**

**RESPONSE TO THIRD SET OF INTERROGATORIES
PROPOUNDED BY TOSHIBA AMERICA MEDICAL SYSTEMS, INC.**

NOW COME the Defendants, Desoto Diagnostic Imaging, LLC, Randon J. Carvel, Lynn T. Carvel, Delta Radiology, P.C. and Zobar Properties, LLC, by and through their attorneys, TATE LAW FIRM, by Kyle P. Tate, and for their Response to Third Set of Interrogatories Propounded by Toshiba America Medical Systems, Inc. do hereby state and answer:

GENERAL OBJECTIONS

1. Defendants object to Plaintiff/Intervenor's instructions and definitions to the extent that they suggest or require any burdens, responsibilities, or objections beyond those set forth in or required by the Federal Rules of Civil Procedure. In responding to these requests, Defendants will comply with the applicable provisions of the Federal Rules of Civil Procedure.

2. Defendants object to any discovery directed at information protected by the attorney work product doctrine, the attorney-client privilege or any other applicable privilege. Defendants further object to any discovery which seeks information that is private, confidential business or commercial information, trade secrets, confidential research or development or proprietary information.

3. Defendants object to discovery which is not relevant or material and which is not reasonable calculated to lead to the discovery of proprietary information.

4. Defendants object to discovery which is unduly burdensome, overly broad, vague and/or ambiguous, and not subject to reasonable limitation in time. Defendants further object to discovery which does not permit the identification of particular documents, subjects and time-frames with sufficient particularity to permit a reasonable response.

5. DEFENDANTS OBJECT TO DISCOVERY BEYOND THAT WHICH IS ALLOWED BY RULE 33 OF THE FEDERAL RULES OF CIVIL PROCEDURE WHICH LIMITS WRITTEN INTERROGATORIES TO 25 IN NUMBER, INCLUDING ALL DISCRETE SUBPARTS.

6. Each of these general objections is incorporated into each and every response as though fully set forth at length therein, in addition to any specific objections stated.

7. Defendants reserve the right to supplement their answers.

ANSWERS TO INTERROGATORIES

1. Please identify all persons who (a) have been employed by DeSoto, including but not limited to all officers, technologists and administrative personnel such as office managers, billing assistants or secretarial assistants or (b) have been employed by DeSoto, as licensed

physicians, and whether or not employees of DeSoto, provided professional services to DeSoto patients. For each person identified, please provide the following information:

- i. the name of each such person;
- ii. the dates of employment for each such person;
- iii. the position(s) held by such person;
- iv. whether or not the person is still employed by you; and
- v. the last known address and telephone number for each such person who is no longer employed by you.

Response: Defendants object to discovery beyond that which is allowed by Rule 33 of the Federal Rules of Civil Procedure which limits written interrogatories to 25 in number, including all discrete subparts. This Interrogatory goes beyond that which is allowed by the Federal Rules of Civil Procedure absent leave of Court or party stipulation, neither of which have occurred.

Defendants further object to this Interrogatory on the grounds that it is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence in that it would, by its terms, seek information regarding current employees who have no knowledge or information whatsoever relating to the claims as set forth in the Complaint or in the Intervenor Complaint. Further, Defendants object to this request to the extent that it seeks confidential, private, business or commercial information or proprietary information.

Without waiving the foregoing objections, Defendants state that the foregoing information has already been disclosed with regard to persons who were employed by DeSoto at the relevant time period, who had knowledge and information relating to the claims as set forth in the Complaint and/or the Intervenor Complaint.

By:



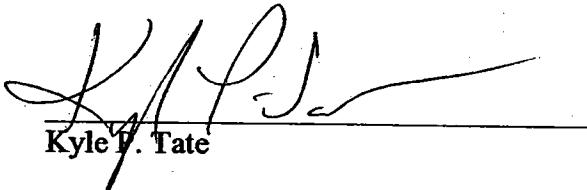
Kyle P. Tate
for TATE LAW FIRM
9085 Sandidge Center Cove
Olive Branch, MS 38654
(662) 893-8833
(662) 893-8824 facsimile

CERTIFICATE OF SERVICE

The undersigned attorney certifies that the foregoing has been served upon the attorney of record for all other parties in this proceeding and upon parties not represented by attorneys by telefax or by delivering a copy of this pleading to the attorney or party personally, or to the offices of such attorney or party, or by placing a copy in the U.S. Mail addressed to such attorney or party named below at his office with sufficient prepaid postage on this 30th day of September, 2003.

Mr. John Chesney
Ms. Julianne Peck
DRINKER BIDDLE & REATH, LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996

Mr. Peter Boyer
Ms. Rosetta Packer
MCCARTER & ENGLISH, LLP
Mellon Bank Center, Suite 700
1735 Market Street
Philadelphia, PA 19103-7501



Kyle P. Tate

VERIFICATION

Lynn T. Carvel, M.D., Chief Manager of DeSoto Diagnostic Imaging, LLC, Defendant, states upon oath that she has read the statements contained in the foregoing Responses to TAMS' Interrogatories and they are true and correct to the best of her knowledge and belief.


LYNN T. CARVEL, M.D., Chief Manager

Exhibit G

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**DELAGE LANDEN FINANCIAL
SERVICES, INC.,**

Plaintiff,

CIVIL ACTION NO. 2:02CV2810

**TOSHIBA AMERICA MEDICAL
SYSTEMS, INC.**

Plaintiff/Intervenor,

v.

**DESOTO DIAGNOSTIC IMAGING, LLC,
RANDON J. CARVEL, LYNN T. CARVEL,
DELTA RADIOLOGY, P.C. and
ZOBAR PROPERTIES, LLC,**

**Defendants and Counter-
Claimants.**

**RESPONSE TO THIRD REQUEST FOR PRODUCTION OF DOCUMENTS
PROPOUNDED BY TOSHIBA AMERICA MEDICAL SYSTEMS, INC.**

NOW COME the Defendants, Desoto Diagnostic Imaging, LLC, Randon J. Carvel, Lynn T. Carvel, Delta Radiology, P.C. and Zobar Properties, LLC, by and through their attorneys, TATE LAW FIRM, by Kyle P. Tate, do hereby submit their Response to Third Request for Production of Documents Propounded by Toshiba America Medical Systems, Inc. Defendants also reserve their right to amend and/or supplement their responses at any time in the future.

GENERAL OBJECTIONS

1. Defendants object to Plaintiff/Intervenor's instructions and definitions to the extent that they suggest or require any burdens, responsibilities, or objections beyond those set forth in or required by the Federal Rules of Civil Procedure. In responding to these requests, Defendants will comply with the applicable provisions of the Federal Rules of Civil Procedure.

2. Defendants object to any discovery directed at information protected by the attorney work product doctrine, the attorney-client privilege or any other applicable privilege. Defendants further object to any discovery which seeks information that is private, confidential business or commercial information, trade secrets, confidential research or development or proprietary information.

3. Defendants object to discovery which is not relevant or material and which is not reasonably calculated to lead to the discovery of admissible evidence.

4. Defendants object to discovery which is unduly burdensome, overly broad, vague and/or ambiguous, and not subject to reasonable limitation in time. Defendants further object to discovery which does not permit the identification of particular documents, subjects and time-frames with sufficient particularity to permit a reasonable response.

5. Defendants object to Plaintiff's document requests that request documents from entities or persons other than Defendants or that request documents that are not in the possession, custody or control of the Defendants.

6. Defendants object to Plaintiff/Intervenor's requests for production of documents to the extent they seek documents which have already been produced in this litigation from any person or party or to the extent they seek documents that are publicly available.

7. Each of these general objection is incorporated into each and every response as though fully set forth at length therein, in addition to any specific objections stated.

8. Defendants reserve the right to supplement their answers.

RESPONSE TO DOCUMENT REQUESTS

1. All patient or medical records for patients treated at DeSoto since the date of its opening to the present.

Response: Defendants object to this Request as irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence and unnecessarily duplicative. Without waiving the foregoing objections, Defendants have provided responsive documents relating to the relevant period of time and the specific transaction or transactions (*i.e.*, the lease of equipment to DeSoto) at issue in this litigation.

2. To the extent not covered in Request No. 1: (a) all documents from referring physicians requesting procedures to be performed by DeSoto in any of the modalities covered by the Medical Equipment (*i.e.*, MR, CT, Ultrasound, Nuclear Medicine and R & F); (b) all documents reflecting any additional procedures ordered by Dr. Carvel or any other DeSoto physician to be performed on patients in any of the modalities covered by the Medical Equipment and; (c) all billing records relating to procedures performed in any of the modalities covered by the Medical Equipment.

Response: Defendants object to this Request as irrelevant to the subject matter of this action and irrelevant as to any claims or defenses of this action and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving the foregoing objections, Defendants have provided responsive documents that have been designated as "Confidential" pursuant to the Confidentiality Stipulation and Protective Order relating to the relevant period of time and the specific transaction or transactions (*i.e.*, the lease of equipment to DeSoto) at issue in this litigation.

3. The personnel files for all persons employed by DeSoto at any during [sic] time during its existence, including but not limited to the personnel files for all billing assistants and office managers.

Response: Defendants object to this Request as irrelevant to the subject matter of this action and irrelevant as to any claims or defenses of this action and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving the foregoing objections, Defendants state that the personnel files for the technologists who were employed by DeSoto at the relevant time period, have already been produced, and which are designated as "Confidential" pursuant to the Confidentiality Stipulation and Protective Order.

4. All versions of DeSoto's Employment Handbook & Information Manual.

Response: Defendants object to this Request as irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving the foregoing objections, Defendants will produce any non-privileged documents responsive to this Document Request that can be identified by virtue of a reasonable search.

5. All agreements, contracts or other legal documents that individuals were required to sign as a condition of employment or of continued employment with DeSoto since the date of its opening to the present.

Response: Defendants object to this Request as irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving the foregoing objections, Defendants will produce any non-privileged documents responsive to this Document Request that can be identified by virtue of a reasonable search.

6. All employee Disciplinary Action Forms that were generated with respect to any employees of DeSoto since the date of its opening to the present.

Response: Defendants object to this Request as irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving the foregoing objections, Defendants will produce any non-privileged documents responsive to this Document Request that can be identified by virtue of a reasonable search.

7. All documents that refer or relate to the deinstallation of the Medical Equipment.

Response: Defendants state that they believe they have already produced the non-privileged documents responsive to this Request in response to TAMS' First Request for Production, but will produce any additional non-privileged responsive documents if they are identified.

8. All agreements with, or communications or correspondence by, from, to or with any of the following or by, from, to or with any employee, agent or representative of the following:

(a) entities involved in (i) the installation of the Medical Equipment or work related to such installation (including, without limitation, construction, electrical or plumbing work), (ii) the deinstallation of the Medical Equipment, or work related to such deinstallation or (iii) the replacement of the Medical Equipment with other equipment, or work related to such replacement. Without limitation, this request includes all communications or correspondence involving those entities believed by TAMS to be named, or to have names resembling: Bullit, Inc., Oxford Instruments, H & H and

Lindgren; entities from which DeSoto purchased, leased or otherwise acquired equipment to replace the Medical Equipment (collectively the "Replacement Equipment") and;

- (b) entities providing, or that have provided, maintenance or repair services to any of the Replacement Equipment;
- (c) entities providing, or that have provided, application or operational training or support to DeSoto in connection with the Replacement Equipment.
- (d) entities providing, or that have provided, applications or operational training or support to DeSoto in connections with the Replacement Equipment.

Response: Defendants object to this Request as irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving the foregoing objection, Defendants state that they believe they have already produced the non-privileged documents responsive to parts (a)(i) and (a)(ii) and will supplement this response in the event other non-privileged documents can be identified by virtue of a reasonable search. Without waiving any foregoing objections, Defendants will also conduct a reasonable search regarding the "work related to such replacement" request portion of part (a)(iii) and will produce any non-privileged responsive documents if they are identified.

9. DeSoto's complete log book for the nuclear medicine machine.

Response: Without waiving any previous objections, Defendants have previously produced information responsive to this Request which is designated as "Confidential" pursuant to the Confidentiality Stipulation and Protective Order. Defendants will however attach another complete copy is designated as "Confidential" pursuant to the Confidentiality Stipulation and Protective Order.

10. To the extent not produced in response to the foregoing requests, all documents that refer or relate to the installation of the equipment that DeSoto leased and purchased to replace the functions performed by the Medical Equipment leased by DeSoto under the Master Lease, including but not limited to all documents sufficient to identify all individuals and companies who participated in the installation of said equipment.

Response: Defendants object to this Request as irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

11. To the extent not produced in response to the foregoing requests, all documents that refer or relate to the financing by DeSoto of equipment that DeSoto leased and purchased to replace the functions performed by the Medical Equipment leased by DeSoto under the Master Lease.

Response: Defendants object to this Request as irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

12. To the extent not produced in response to the foregoing requests, all communications and correspondence between DeSoto and any third party, including but not limited to Siemen's [sic] Medical Solutions USA, Inc., Miller Medical Imaging or Medical Equipment Consulting Services, Inc., regarding the equipment that DeSoto leased and purchased to replace the functions performed by the Medical Equipment leased by DeSoto under the Master Lease.

Response: Defendants object to this Request as irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

13. All UCC filings by DeSoto from the year 2000 to the present, including all UCC filings by DeSoto with respect to the equipment that DeSoto leased and purchased to replace the functions performed by the Medical Equipment leased by DeSoto under the Master Lease.

Response: Defendants object to this Request as duplicative in that it appears to call for the production of documents that have already been requested in TAMS' First Request for Production of Documents Addressed to Defendants, No. 19. Defendants restate that they are unaware of any documents responsive to this request, other than those responsive documents that have already been provided by the parties in this litigation. In the event that new responsive documents are discovered, Defendants agree to supplement these responses according to the Federal Rules of Civil Procedure.

14. All documents that reflect, relate or refer to your change of name from DeSoto Diagnostic Imaging, LLC to Carvel Imaging Center.

Response: Defendants object to this Request as irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving the foregoing objection, Defendants will produce any non-privileged documents responsive to this Document Request that can be identified by virtue of a reasonable search.

15. All correspondence and communications with all referring physicians that refer or relate to the Medical Equipment.

Response: Defendants object to this Request as irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving the foregoing objection, Defendants will produce any non-privileged documents responsive to this Document Request that can be identified by virtue of a reasonable search.

16. All correspondence and communications between DeSoto and any third party relating to the Medical Equipment.

Response: Defendants object to this Request as vague and overbroad in that it fails to set forth and describe the items requested to be reviewed "with reasonable particularity" as required by Federal Rule of Civil Procedure 34(b). Defendants further object to this Request as irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

17. To the extent not produced in response to the foregoing requests, all billing records sufficient to show the number of times each piece of Medical Equipment was used for diagnostic purposes.

Response: Without waiving any previous objections, Defendants have produced approximately 4,000 documents consisting of DeSoto's billing ledger which is responsive to this request and which is designated as "Confidential" pursuant to the Confidentiality Stipulation and Protective Order.

18. To the extent not produced in response to the foregoing requests, all billing records sufficient to show the number of times the equipment that DeSoto leased and purchased to replace the functions performed by the Medical Equipment leased by DeSoto under the Master Lease has been used for diagnostic purposes.

Response: Defendants object to this Request as irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

19. All documents, including without limitation equipment logs, maintained by DeSoto or service or "call" logs kept by DeSoto or any third party, that constitute, reflect, refer or relate to:

(a) all complaints, queries or requests for service, advice or repairs made by you concerning the performance or reliability of the equipment that DeSoto leased or purchased to replace the Medical to (i) the provider (e.g., manufacturer, vendor or lessor) of such equipment (ii) any person providing warranty, maintenance or repair service with respect to such equipment or (iii) any person providing applications or operational training or support with respect to such equipment;

(b) responses to any of the matters identified in (a).

Response: Defendants object to this Request as irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

20. All documents that constitute, reflect, refer or relate to all fees and/or monies due under any contractual agreement with any party in connection with the sale and/or lease as well as the servicing and/or maintenance of the equipment that DeSoto leased or purchased to replace the functions performed by the Medical Equipment leased by DeSoto under the Master Lease.

Response: Defendants object to this Request as irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

21. All documents that constitute, reflect, refer or relate to all damages DeSoto has allegedly incurred, including actual, incidental and consequential damages, punitive damages, attorney's fees, costs and any other component of damages.

Response: Defendants object to this Request to the extent, as framed, it should be interpreted as calling for the production of documents or materials protected by the attorney-client privilege. Without waiving the foregoing objection, Defendants will produce any non-privileged documents responsive to this Document Request identified by virtue of a reasonable search.

22. All documents that constitute, concern, reflect or relate to DeSoto's billing policies, practices or procedures with respect to the billing of private payors and/or third party payors, including without limitation private insurers, Medicare and Medicaid, for services provided through the use of the Medical Equipment.

Response: Defendants object to this Request as irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

23. All documents that refer or relate to the negotiation or execution of the Master Lease or the Guaranties.

Response: Defendants object to this Request to the extent, as framed, it should be interpreted as calling for the production of documents or materials protected by the attorney-client privilege. Without waiving the foregoing objection, Defendants will produce any non-privileged documents responsive to this Document Request identified by virtue of a reasonable search.

24. All insurance policies maintained by you that may provide insurance coverage for the acts alleged in the pleadings or which might otherwise be relevant to this action.

Response: Defendants are unaware at this time of any responsive documents to this Document Request. Defendants will conduct a reasonable search and produce any non-privileged documents responsive to this Document Request.

25. All documents concerning DeSoto's annual financial information for the years 2000, 2001, and 2002, including, but not limited to: (a) DeSoto's annual financial statements; (b) DeSoto's revenue and profit and loss statements; and (c) any other annual compilation of DeSoto's financial information.

Response: Without waiving any previous objections, Defendants further object to this Request as unnecessarily duplicative in that it appears to call for the production of documents that have already been requested in TAMS' First Request for Production of Documents Addressed to Defendants, No. 15, to which Defendants have objected. Without waiving any previous objections, Defendants state that DeSoto has provided responsive documents in the form of its certified tax returns which provide a complete and accurate compilation of DeSoto's financial information for the years requested.

26. All documents that constitute, refer or relate to (a) bills, charges or invoices issued to private or third party payors, including private insurers, Medicare or Medicaid, by Lynn T. Carvel, P.L.L.C. or any other person or entity for the professional component of services rendered in connection with procedures performed through DeSoto's use of the Medical Equipment (b) amounts paid in response to such bills, charges or invoices.

Response: Defendants object to this Request as irrelevant to the subject matter of this action and irrelevant as to any claims or defenses of this action and not reasonably calculated to lead to the discovery of admissible evidence.

27. All documents that refer or relate to the entity known as Lynn T. Carvel, P.L.L.C., including but not limited to all documents that reflect any payments made by Lynn T. Carvel, P.L.L.C. to Dr. Lynn Carvel or to DeSoto Diagnostic Imaging, LLC in connection with or on account of services provided through use of Medical Equipment.

Response: Defendants object to this Request as irrelevant to the subject matter of this action and irrelevant as to any claims or defenses of this action and not reasonably calculated to lead to the discovery of admissible evidence.

28. All documents that refer or relate to AGFA and the PACS System purchased and/or leased by you in conjunction with your lease of the Medical Equipment, including but not limited to all correspondence between you and AGFA or Talk Tech regarding the PACS System, the Talk Tech system or any interface between those systems and the Medical Equipment.

Response: Defendants object to this Request as irrelevant to the subject matter of this action and irrelevant as to any claims or defenses of this action and not reasonably calculated to lead to the discovery of admissible evidence.

29. All documents that constitute, reflect, refer or relate to the RIS system or any information that resides on the RIS system.

Response: Defendants object to this Request as vague and overbroad in that it fails to set forth and describe the items requested to be reviewed "with reasonable particularity" as required by Federal Rule of Civil Procedure 34(b), and to the extent that it is incomprehensible. Defendants further object to this Request as irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

30. All documents relating to any way in which the RIS system affected, or allegedly affected, the performance of the Medical Equipment or of any equipment or systems (such as, by way of example only, DICOM or the AGFA PACS system) used in conjunction with the Medical Equipment.

Response: Defendants object to this Request as vague and overbroad in that it fails to set forth and describe the items requested to be reviewed "with reasonable particularity" as required by Federal Rule of Civil Procedure 34(b), and to the extent that it is incomprehensible Defendants further object to this Request as irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

31. All documents that relate to or describe the proper method of starting up, shutting down or operating the Medical Equipment, including without limitation all service, applications or operator's manuals and all protocol books or other notes (including without limitation notes of the kind described by May Vokaty in her deposition) relating to the appropriate protocols or settings to be used for particular purposes.

Response: Defendants object to this Request as being irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request to the extent that it seeks documents in the possession of parties other than the Defendants. To the best of Defendants' knowledge, information and belief, any documents responsive to this Request are in the possession, custody or control of Plaintiff/Intervenor Toshiba America Medical Systems, Inc. as TAMS removed all such documents at the time the Medical Equipment was removed.

32. All documents that constitute, reflect or refer to (a) checks, test or procedures performed by DeSoto on the Medical Equipment, whether regularly (e.g., daily, weekly,

monthly, etc.) or otherwise in order to ensure that the equipment was properly set up and in proper condition to perform the procedures for which it was designed, including without limitation all "floods", Quality Assurance (Q and A) checks or tests, uniformity tests or checks and other tests checks or tests employing phantoms and (b) the results of such checks, tests or procedures.

Response: Defendants object to this Request as vague and overbroad in that it fails to set forth and describe the items requested to be reviewed "with reasonable particularity" as required by Federal Rule of Civil Procedure 34(b), and to the extent that it is incomprehensible Defendants further object to this Request as being irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

33. The document identified by May Vokaty in her deposition as a kind of manual relating to Nuclear Medicine that was provided to DeSoto by Mr. Jim Smith and that was believed by Ms. Vokaty to have been written by Mr. Smith.

Response: Defendants object to this Request as being irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request to the extent that it seeks documents in the possession of parties other than the Defendants. To the best of Defendants' knowledge, information and belief, any documents responsive to this Request are in the possession, custody or control of Plaintiff/Intervenor Toshiba America Medical Systems, Inc. as TAMS removed all such documents at the time the Medical Equipment was removed.

34. All documents that constitute, reflect, relate or refer to generally recognized standards among radiologists, or standards that DeSoto or any Defendant contends are generally

recognized among radiologists, relating to image quality with regard to any of the modalities covered by the Toshiba equipment.

Response: Defendants object to this Request as vague and overbroad in that it fails to set forth and describe the items requested to be reviewed "with reasonable particularity" as required by Federal Rule of Civil Procedure 34 (b), and to the extent that it is incomprehensible. Defendants further object to this request as attempting to obtain an expert opinion which is not yet due in this case. Defendants further object to this Request to the extent, as framed, it should be interpreted as for calling for the production of documents or materials protected by the attorney-client privilege.

35. All documents sufficient to show the ownership and management structure of each corporate defendant, including the identity of all present and past owners, shareholders, subsidiaries, officers, employees, divisions, joint ventures and office locations.

Response: Defendants object to this Request as being irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

36. All corporate organizational charts.

Response: Defendants object to this Request as being irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

37. All documents that you contend support any of the 27 Affirmative Defenses contained in your Answer and Counterclaim to TAMS.

Response: Defendants object to this Request to the extent that it calls for the mental impressions and legal conclusions of their attorneys in the preparation of their case of which materials are protected by the work product doctrine and the attorney-client privilege. Without

waving the foregoing objection, Defendants have produced and will continue to produce throughout discovery any non-privileged documents responsive to this Request.

By: 

Kyle P. Tate
for TATE LAW FIRM
9085 Sandidge Center Cove
Olive Branch, MS 38654
(662) 893-8833
(662) 893-8824 facsimile

CERTIFICATE OF SERVICE

The undersigned attorney certifies that the foregoing has been served upon the attorney of record for all other parties in this proceeding and upon parties not represented by attorneys by telefax or by delivering a copy of this pleading to the attorney or party personally, or to the offices of such attorney or party, or by placing a copy in the U.S. Mail addressed to such attorney or party named below at his office with sufficient prepaid postage on this 30th day of September, 2003.

Mr. John Chesney
Ms. Julianne Peck
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One Logan Square
18th and Cherry Streets
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Mr. Peter Boyer
Ms. Rosetta Packer
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Mellon Bank Center, Suite 700
1735 Market Street
Philadelphia, PA 19103-7501


Kyle P. Tate

Exhibit H



Julianne Peck
215-988-1996
julianne.peck@dbr.com

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One Logan Square
18TH and Cherry Streets
Philadelphia, PA
19103-6996
215-988-2700
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VIA FACSIMILE

Kyle P. Tate, Esq.
9085 Sandidge Center Cove
Olive Branch, Mississippi 38654

RE: De Lage Laden Financial Services, Inc. and Toshiba Medical Systems, Inc. v. DeSoto Diagnostic Imaging, L.L.C., et al, U.S.D.C. Eastern District of Pennsylvania, C.A. No. 2:02CV2810

Dear Kyle:

We are in receipt of Defendants' responses to TAMS' Third Set of Interrogatories and our Third Request for Production of Documents. Given that you have flat out refused to produce various important categories of responsive information, and given that we are on the eve of our expert disclosure deadline, we have outlined our position as to the deficiencies of your responses below. To the extent that you are willing to meet and confer with us with regard to any or all of these issues, we would appreciate a telephone call at your earliest convenience as we intend to file a motion to compel with regard to the categories of information and documents that are not received in our office on or before Friday October 17, 2003.

We are also in receipt of what you purport is a privilege log. Your clients objected to the production of various documents and information requested in interrogatories on the ground that the information sought was protected by the attorney-client privilege. *See, e.g.*, Defendants' Responses to TAMS' First Request for Production of Documents Nos. 2 and 18; Defendants' Responses to TAMS' Second Request for Production of Documents No. 4; and Defendants' Responses to TAMS' Third Request for Production of Documents Nos. 21, 23, 34 and 37. However, your privilege log does not list a single document protected by that privilege. Rather, it lists confidential information redacted from documents that have been produced. If no attorney-client privileged documents exist, please amend your responses, or inform us in writing that such is the case. Otherwise please produce a supplemental privilege log on or before October 17, 2003.

Third Set of Interrogatories

As we have stated on numerous occasions, your objection to our interrogatories on the basis that they exceed the twenty five interrogatory limit of Federal Rule of Civil Procedure 33(a) is frivolous. So too, is your blanket contention that the identity of former DeSoto employees, including office staff and physicians, is irrelevant. Dr. Carvel

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Kyle P. Tate, Esquire

October 10, 2003

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has already testified that at least one other radiologist (other than herself) worked at DeSoto during the relevant time period. A radiologist who made diagnoses from the images produced on the Toshiba equipment can hardly be considered irrelevant. Moreover, as to the other employees, it is impossible, especially given that DeSoto was a small family-run business, that they would not have relevant information, or information that could lead to the discovery of admissible evidence, particularly when you contend that the equipment was so bad that it failed to meet its essential purpose, caused DeSoto to lose referrals, and forced Randon Carvel (according to his deposition testimony) to quit his job and help out. TAMS has a right to explore the validity of these claims with the individuals that worked at DeSoto day in and day out, and had contact with the referring physicians and your clients on a daily basis.

Third Request For Production

You have responded to these requests in the following ways: (a) you have outright refused to produced the requested documents on the ground that they are irrelevant; (b) you have agreed to produce a limited category (as opposed to all categories) of the requested documents; or (c) you have agreed to produce documents that can be identified by virtue of a reasonable search.

We obviously have no dispute with regard to what you have agreed to produce, but simply cannot wait (as we have in the past) to our prejudice, for you to produce these documents at some unidentified future date. We look forward to receiving them within the week.

We dispute your bald assertion that the following requests are irrelevant, for the following reasons:

Request Nos. 8(b)(c)(d), 10-12, 18-20: (Documents Relating to Replacement Equipment)

These requests seek, with regard to the replacement equipment, documents relating to: the financing by DeSoto to lease or purchase the equipment; the installation of the equipment; communications with third-parties, including Siemen's, Miller Medical Imaging and Medical Equipment Consulting Services, regarding the equipment; billing records reflecting the use of such equipment; complaints by DeSoto with regard to the equipment; service required on the equipment; and fees due by DeSoto relating to the equipment.

This information is relevant in that it will help demonstrate whether the equipment purchased and/or leased to replace the Toshiba equipment operated

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any better or worse than the Toshiba equipment. It will also help demonstrate when the equipment was contracted for (*i.e.* when DeSoto *really* made the decision to de-install the Toshiba equipment), and whether the replacement equipment cost more or less than the Toshiba equipment – which may establish an ulterior motive for the de-installation of the Toshiba equipment. What DeSoto paid for the replacement equipment also bears on defendants' alleged damages. In what manner DeSoto used the replacement equipment (*i.e.* how often and for what procedures) also bears on many of the issues in the case, particularly when Dr. Carvel has put the capabilities of the Toshiba equipment versus her expectations, directly at issue in this case. For these reasons all of the above mentioned documents are relevant, and TAMS will move to compel if they are not produced.

Request No. 16: seeks correspondence and communications between DeSoto and third parties relating to the medical equipment. This request does not need to be stated with greater particularity. Obviously it includes all invoices and bills relating to use of the medical equipment, all communications with physicians relating to the medical equipment, any filings with the State of Mississippi that refer to the medical equipment, any communications with third parties relating to the de-installation or removal of the medical equipment, and any other communications with third parties relating or referring to the medical equipment. All such communications are relevant and should be produced.

Request No. 22: seeks documents evidencing DeSoto's billing policies and procedures, which are necessary for the purpose of determining whether DeSoto was using the Toshiba or replacement equipment for legal purposes, and to determine whether DeSoto's profits were or are inflated due to Medicare/insurance fraud. To the extent that defendants' seek damages in this case, this information is clearly relevant.

Request Nos. 26, 27: (*Revenues Generated by Lynn T. Carvel, PLLC*)

These requests seek bills, charges and invoices to private or third-party payers for the professional services rendered by Lynn T. Carvel, PLLC, in connection with the use of the Toshiba equipment, and all documents relating to Lynn T. Carvel, PLLC, including those that reflect payments from Lynn T. Carvel, PLLC to defendants Dr. Carvel and/or DeSoto. During the relevant time period, all monies earned by Lynn T. Carvel, PLLC were generated through the use of the Toshiba equipment that defendants allege failed to meet its essential purpose. Your contention that information relating to this company (which

Kyle P. Tate, Esquire

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thrived or failed based only on the quality of the images produced on the Toshiba equipment) is not relevant, is astounding.

Request Nos. 28: seeks information relating to the AGFA and PACS system purchased/leased by DeSoto for use with the Toshiba equipment. Given that Dr. Carvel has complained at length regarding the performance of those systems, and blamed the poor performance on TAMS and on her decision to de-install the equipment, we deem any and all records relating to AGFA and PACS, in particular any communications DeSoto had with AGFA or Talk Tech regarding the PACS system, the Talk Tech System or any interface between those systems to be highly relevant and demonstrative of whether the problem was in fact deemed by DeSoto to be a TAMS issue or an AGFA issue, or admitted by AGFA/PACS to be their problem. They are also relevant to show whether and when DeSoto raised its alleged issues with AGFA/PACS, and whether and when those issues were resolved. If your clients would like to withdraw their claim that TAMS is responsible for the problems they allege to have had with these systems, then I would agree, this request is not relevant. Otherwise there is no basis for you to withhold these documents.

Request No. 29: seeks information relating to the RIS system. Dr. Carvel testified that the radiology information ("RIS") system stores patient name and information, and serves as an online patient appointment file. See Dr. Carvel's July 21, 2003 Dep. at 231-233. To the extent that it stores information relating to procedures performed (or scheduled to be performed) on the Toshiba equipment it is clearly relevant and should be produced. If you contend that the information stored on the system is irrelevant, I suggest that you identify precisely what information is stored on the equipment and state with particularity why that information is not relevant.

Request No. 30: seeks documents that relate to any way in which the RIS system affected the performance of the Medical equipment. Because you purport not to understand this request, I direct your attention to Dr. Carvel's July 21, 2003, deposition transcript at page 53 where she testified that there was some sort of problem between the modalities (*i.e.* the Toshiba equipment) and AGFA in transferring the accession numbers (which she stated were produced by the RIS system) via HL-7. She added that other factors were not popping into her head at the moment. Between Request Nos. 28 and 30 we seek any all documents relating to the problem Dr. Carvel was describing therein, and that relate to any other ways if which the RIS system and/or the AGFA/PACS systems affected the performance of the Toshiba equipment.

Kyle P. Tate, Esquire
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Page 5

Request No. 31: seeks documents in defendants' possession, custody or control that relate to methods of operating the Toshiba equipment. Obviously, given that DeSoto alleges it experienced trouble operating the equipment, this information is relevant. It is of no consequence that responsive information may be in TAMS' possession. This does no absolve DeSoto of its discovery obligations, and your argument that this information (particularly the records about which May Vokaty testified) is irrelevant is indefensible.

Request No. 32: seeks documents relating to any tests or procedures run by Desoto (such as "floods", Quality Assurance checks or tests, uniformity tests or checks or checks and other tests employing phantoms) to ensure that the Toshiba equipment was properly set up and in proper conditions to perform procedures. This request is stated with sufficient particularity, and contrary to your assertion, is not incomprehensible. Moreover, given that, from your standpoint, this lawsuit is all about whether the equipment functioned properly, your position that this information is not relevant will not stand.

Request No. 34: seeks documents relating to any standards used by radiologists regarding image quality. While you do not object to this request as irrelevant, you content that it calls for privileged documents (although none were identified in your privilege log) and for expert testimony. This request does not seek an expert opinion as to the images produced by the Toshiba equipment. Rather, it seeks the production of any documents, in DeSoto's possession, custody or control, that refer or relate to standards used by radiologists to determine the diagnostic value of radiological images.

We also dispute your unilateral decision to produce only a limited category of documents responsive to certain requests. To the extent requested information is relevant to this lawsuit – *all* responsive documents must be produced. As such, it is our position that the following responses are also deficient.

Request No. 1: You have not produced all patient medical records which will help demonstrate the procedures requested, the procedures performed, the diagnoses (or inability to perform diagnoses) from the images produced by the Toshiba equipment etc. There simply is no legitimate basis to withhold any documents that reflect this information.

Request No. 2(a): As stated above, TAMS is entitled to all documents that reflect the procedures ordered by referring physicians. Dr. Carvel testified that the billing records produced do not reflect the procedures ordered, but rather the procedures actually performed. Given that you have alleged that the poor

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Kyle P. Tate, Esquire
October 10, 2003
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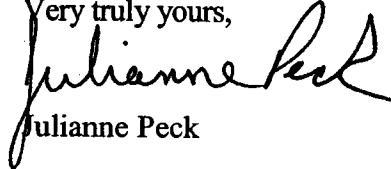
performance of the Toshiba equipment affected referrals and caused DeSoto to lose business, TAMS has an unqualified right to all documents that reflect the procedures ordered, and by whom. TAMS also has a right to this information in order to compare the procedures requested to the procedures performed. This comparison will help demonstrate or refute DeSoto's allegation that due to equipment failure not all procedures that were ordered could be performed. It will also help demonstrate whether Dr. Carvel performed unnecessary/unauthorized procedures in order to generate illegal fees.

Request No. 3: TAMS is entitled to the personnel files of all DeSoto employees as they will reveal the identities and positions held of all physicians, administrative assistants, billing personnel, etc. who may have information relevant to this dispute. The idea that none of these employees in your small "mom and pop" operation (as referred to by Dr. Carvel) is ridiculous and indefensible.

Request No. 25: seeks DeSoto's annual financial information for the years 200, 2001 and 2002. The fact that you have produced DeSoto's tax return does not absolve you of the obligation to produce other relevant financial information. DeSoto's financial performance was directly tied to the performance of the Toshiba equipment, and therefore all financial information is relevant – particularly when this information will either refute or support your damages theory.

I look forward to hearing from you shortly.

Very truly yours,



Julianne Peck

JP

cc: Rosetta Packer, Esq.
William Matthews, Esq.

NS

Exhibit I

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DELAGE LANDEN FINANCIAL SERVICES, INC.,	:	CIVIL ACTION NO. 2:02CV2810
Plaintiff,	:	
TOSHIBA AMERICA MEDICAL SYSTEMS, INC.	:	HON. RONALD L. BUCKWALTER
Plaintiff/Intervenor,	:	
v.	:	
DESOTO DIAGNOSTIC IMAGING, LLC., RANDON J. CARVEL, LYNN T. CARVEL, DELTA RADIOLOGY, P.C. and ZOBAR PROPERTIES, LLC	:	STIPULATION AND ORDER FOR EXTENTION OF PRE-TRIAL DEADLINES
Defendants.	:	

STIPULATION AND ORDER

WHEREAS, Defendants wish to amend their pleadings in this matter and have provided the other parties with copies of their proposed amended pleadings for review;

WHEREAS, plaintiff De Lage Landen Financial Services, Inc. ("DLL") intends to oppose Defendants' proposed amendments and plaintiff-intervenor Toshiba America Medical Systems, Inc. ("TAMS") may do so;

WHEREAS, Defendants shall, therefore, promptly file a motion for leave to amend their pleadings;

WHEREAS the parties, in order to avoid any undue delay, have agreed that, without waiver of any objections to Defendants' proposed amendments, the parties will take discovery of

the additional issues sought to be raised by Defendants' proposed amendments while Defendants' motion for leave to amend is *sub judice* and without awaiting a ruling by the Court on such motion;

WHEREAS, defendant DeSoto Diagnostic Imaging has, in addition, been unable to date to complete the requested production and cataloging of many thousands of digital images that the parties agree are crucial to the resolution of this case and to appropriate and meaningful expert review;

WHEREAS, defendant DeSoto has advised the other parties that the retrieval, copying and production of the images in question is extremely time-consuming and burdensome, requiring the copying of information to literally hundreds of CDs, has placed considerable strain on DeSoto's limited resources, and has not been completed at this time despite DeSoto's diligent efforts;

WHEREAS, the current discovery deadline in this matter is the deadline originally established by the Court, September 30, 2003, and has not been extended;

AND WHEREAS, the parties are in agreement that a sixty (60) day extension of the discovery deadline and all other current pretrial deadlines would allow them to complete such discovery as might be necessary in view of Defendants' intended amendments as well as to complete other outstanding discovery and prepare adequately for the trial of this matter:

NOW, THEREFORE, the parties hereto stipulate by their undersigned counsel, subject to the Court's approval, that all pre-trial deadlines are hereby extended for an additional (60) days, such that:

1. The original discovery deadline of September 30, 2003 shall be extended to November 30, 2003.

2. The original deadline of October 20, 2003 for all dispositive motions is extended to December 20, 2003.

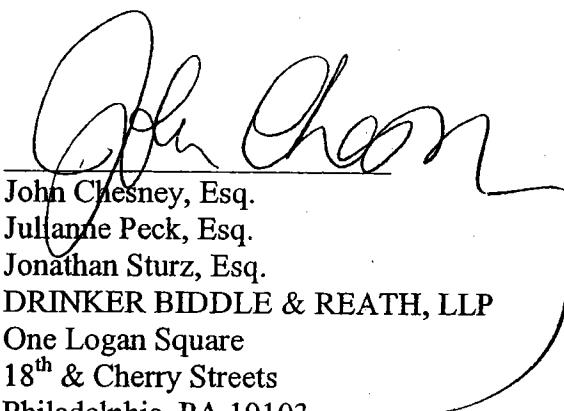
3. The due date for initial expert disclosures required under Rule 26 is extended to October 29, 2003.

4. The due date for providing Rule 26 disclosure for rebuttal experts is extended to November 22, 2003.



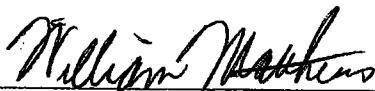
Rosetta B. Packer, Esq.
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Olive Branch, Mississippi 38654

Attorneys for Defendants

The foregoing Stipulation is hereby approved and it is further ordered that this action shall be placed in the trial pool on _____.

SO ORDERED:

Buckwalter, J.

Exhibit J



Julianne Peck
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julianne.peck@dbr.com

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WILMINGTON

October 17, 2003

VIA FACSIMILE

Kyle P. Tate, Esq.
9085 Sandidge Center Cove
Olive Branch, Mississippi 38654

RE: *De Lage Laden Financial Services, Inc. and Toshiba Medical Systems, Inc. v. DeSoto Diagnostic Imaging, L.L.C., et al, U.S.D.C. Eastern District of Pennsylvania, C.A. No. 2:02CV2810*

Dear Kyle:

As stated in my letter dated October 10, 2003, we intend to file a motion to compel if we do not hear from you today with regard to the discovery deficiencies identified in that letter. We would have preferred to work these issues out without involving the Court, but, having heard nothing from you, we cannot wait any longer for the production of centrally relevant documents.

The most significant deficiency is DeSoto's failure to produce *all* documents relating to the procedures requested and performed on the equipment. Most importantly, DeSoto has withheld the referring physician scripts/requests for procedures and the dictation reports (or similar reports, however designated) prepared by Dr. Carvel and/or any other radiologist involved with the procedures performed by DeSoto. As you know, these documents are very important for a number of reasons that we have discussed.

Please note that these documents were requested on **March 12, 2003**, in TAMS' First Request for Production of Documents, Request No. 8 (seeking all documents that refer or relate to the use of the Medical Equipment); on **June 24, 2003**, in TAMS' Second Request for Production of Documents, Request No. 8 (seeking all documents that refer or relate to the number of times each piece of Medical Equipment was used for diagnostic purposes); and on **August 27, 2003**, in TAMS' Third Request for Production of Documents, Request No. 1 (seeking all patient/medical records for patients treated at DeSoto since the date of its opening to present) and Request No. 2 (seeking, to the extent not covered in Request No. 1, all documents from referring physicians requesting procedures to be performed by DeSoto and all documents reflecting any additional procedures (i.e. beyond those requested) performed by Desoto).

An expert or consultant will need to review these documents and the work will take a good deal of time. Their production is long overdue and necessary immediately. Accordingly, we will be filing an emergency motion with the Court early next week and

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Kyle P. Tate, Esquire
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Page 2

requesting expedited disposition of that motion unless you advise me today that these documents will be produced, via federal express, on or before Monday, October 20, 2003.

We hope such a motion will not be necessary and hope to hear from you shortly.

Very truly yours,

Julianne Peck
Julianne Peck

JP

cc: Rosetta Packer, Esq.
William Matthews, Esq.

NS

Exhibit K

PECK, JULIANNE (PH)

From: PECK, JULIANNE (PH)
Sent: Tuesday, October 21, 2003 11:09 AM
To: 'Kyle Tate'
Cc: Chesney, John; wmatthews@saul.com
Subject: RE: Motion to Compel

Kyle,

You have ignored our correspondence regarding your latest discovery deficiencies for over a week. Certainly if you had any intention of substantively responding, you or Holly could have communicated that fact. In fact, you still refuse to communicate on this issue even now. At this stage of the litigation we can not sit back for weeks on end while you continuously ignore this issue. If you do in fact intend to change your position with regard to the relevancy of some or all of our requests (and/or are willing to discuss it), please let me know immediately. If not, we have no choice but to file a motion to compel.

Juli

-----Original Message-----

From: Kyle Tate [mailto:ktate@tatelawfirm.com]
Sent: Tuesday, October 21, 2003 10:28 AM
To: PECK, JULIANNE (PH)
Cc: Chesney, John; wmatthews@saul.com
Subject: Re: Motion to Compel

Juli,

Your below e-mail is the exact reason why I asked that you not communicate with me anymore on this case. Even though you knew I was in a Settlement conference all day yesterday in Arkansas and unable to respond, you proceeded with yet another inappropriate self serving e-mail. Your below e-mail is confirmation of nothing. Please do not send me anymore e-mails and if you do, I will not respond. Your continued behavior is unacceptable and will be shared with the Court.

Kyle

----- Original Message -----

From: Julianne.Peck@dbr.com
To: ktate@tatelawfirm.com ; hbrady@tatelawfirm.com
Cc: John.Chesney@dbr.com
Sent: Monday, October 20, 2003 4:38 PM
Subject: Motion to Compel

Kyle,

Neither John nor I have heard anything from you in response to my letters dated October 10 and October 17, 2003, regarding DeSoto's discovery deficiencies. This e-mail confirms that unless we receive the requested information tomorrow, (or notice that the requested information has been sent), we will be filing an emergency motion to

compel this week.

Juli

This message contains information which may be confidential and privileged.
Unless you are the addressee (or authorized to receive for the addressee),
you may not use, copy or disclose to anyone the message or any information
contained in the message. If you have received the message in error,
please advise the sender by reply e-mail@dbr.com, and delete the message.

Thank you very much.

Exhibit L

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DELADE LANDEN FINANCIAL SERVICES,)
INC.,)
PLAINTIFF,)
TOSHIBA AMERICA MEDICAL SYSTEMS,)
INC.,)
PLAINTIFF/INTERVENOR,)
VS.) 2-02CV2810
DESOTO DIAGNOSTIC IMAGING, LLC,)
RANDON J. CARVEL, LYNN T. CARVEL,)
DELTA RADIOLOGY, PC, AND ZOBAR)
PROPERTIES, LLC,)
DEFENDANTS.)

DEPOSITION

OF

LYNN T. CARVEL, M.D.

RULE 30 (B) (6) TESTIMONY

JULY 21, 2003

ALPHA REPORTING CORPORATION
KORIAN NEAL, RPR, CCR
100 North Main Building, The Lobby
Memphis, Tennessee 38103
(901) 523-8974

Page 2	Page 4
<p>1 The deposition of LYNN T. CARVEL, M.D., 2 is taken on this, the 21st day of July, 2003, on 3 behalf of the Plaintiff/Intervenor, pursuant to notice 4 and consent of counsel, beginning at approximately 5 9:25 a.m. in the offices of Baker, Donelson, Bearman, 6 Caldwell, & Berkowitz, 19th Floor, 165 Madison Avenue, 7 Memphis, Tennessee.</p> <p>8 This deposition is taken pursuant to the 9 terms and provisions of the Federal Rules of Civil 10 Procedure.</p> <p>11 All forms and formalities are waived, and 12 objections alone as to relevancy, materiality and 13 competency are reserved, to be presented at or before 14 the hearing. Objections as to the form of the 15 question must be made at the time of the taking of the 16 deposition. The signature of the witness is not 17 waived.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 INDEX</p> <p>2 Witness (LYNN T. CARVEL, M.D.) Page</p> <p>3 Direct Examination by Mr. Chesney.....05</p> <p>4</p> <p>5</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 No. Page</p> <p>9 1 TAMS' Notice of Deposition.....07</p> <p>10 2 Diagram.....88</p> <p>11 3 Work Order Notes.....180</p> <p>12 4 X-Ray Journal.....189</p> <p>13 5 Transcribed Telephone Conversation...194</p> <p>14 6 Transcribed Telephone Conversation...194</p> <p>15 7 Transcribed Telephone Conversation...194</p> <p>16 8 Transcribed Telephone Conversation...194</p> <p>17 9 Transcribed Telephone Conversation...194</p> <p>18 10 Transcribed Telephone Conversation...194</p> <p>19 11 Toshiba Warranty Information.....241</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 COURT REPORTER'S CERTIFICATE.....274</p>
Page 3	Page 5
<p>1 - APPEARANCES -</p> <p>2 For THE PLAINTIFF: 3 PETER J. BOYER, ESQ. 4 McCarter & English, LLP 5 Attorneys at Law 6 Mellon Bank Center 7 Suite 1700 8 1735 Market Street 9 Philadelphia, PA 19103-7501 10 (215) 979-3800</p> <p>11 For THE PLAINTIFF/INTERVENOR: 12 JOHN CHESNEY, ESQ. 13 JULIANNE PECK, ESQ. 14 Drinker, Biddle & Reath, LLP 15 Attorneys at Law 16 One Logan Square 17 18th and Cherry Streets 18 Philadelphia, PA 19103-6996</p> <p>19 For THE DEFENDANT DESOTO DIAGNOSTIC IMAGING: 20 KYLE P. TATE, ESQ. 21 Tate Law Firm 22 Attorneys at Law 23 424 Ouachita Avenue 24 Hot Springs, AK 71901 25 (501) 624-9900</p> <p>26 COURT REPORTING FIRM: ALPHA REPORTING CORPORATION 27 Korian Neal, RPR, CCR 28 100 North Main Street 29 The Lobby 30 Memphis, Tennessee 38103 31 (901) 523-8974</p>	<p>1 LYNN CARVEL, 2 called as a witness, having been first duly sworn, was 3 examined and testified as follows:</p> <p>4 MR. TATE: John, just as a preliminary 5 matter, I want to make sure that we're all straight on 6 something as far as the 30(b)(6) deposition with 7 Dr. Carvel will be on behalf of both TAMS and DLL at 8 the present time. That was my understanding coming 9 here.</p> <p>10 MR. CHESNEY: Well, we noticed it. I 11 think Peter will have questions. I mean, do you have 12 an estimate of how long -- this is not on the record.</p> <p>13 MR. TATE: I want this on the record.</p> <p>14 MR. CHESNEY: On the record, this was a 15 30(b)(6) deposition noticed by TAMS.</p> <p>16 MR. TATE: But it's my understanding of 17 our conversations that you did coordinate that with 18 DLL?</p> <p>19 MR. CHESNEY: Culminating the scheduling.</p> <p>20 MR. TATE: It's my understanding through 21 conversation of a conference that we had that y'all 22 would conduct a 30(b)(6) deposition together.</p> <p>23 MR. BOYER: I think that's right. And we 24 also indicated that we would separately take the 25 deposition of Dr. Carvel in her individual capacity.</p>

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1 Q. Was it before or after the Toshiba equipment
 2 was deinstalled?
 3 A. It was before.
 4 Q. You said it would not burn CDs in the jukebox,
 5 I think you called it?
 6 A. Correct.
 7 Q. And was that problem solved?
 8 A. It was solved, but that has been a recurring
 9 problem since it was initially solved.
 10 Q. When was it initially solved?
 11 A. I don't remember.
 12 Q. Was it before or after the Toshiba
 13 equipment --
 14 A. Before.
 15 Q. -- was deinstalled?
 16 A. It was before the Toshiba equipment was
 17 deinstalled.
 18 Q. Now you said, I think, that this problem
 19 caused the potential loss of image. Did you in fact
 20 lose any images?
 21 A. Not to my knowledge.
 22 Q. And why was that?
 23 A. Because there is a short-term memory storage
 24 within the system. The CD burning is for long-term
 25 storage purposes. Had the problem not been caught, then

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1 we could have potentially lost that data on the
 2 short-term storage when the memory filled up and needed
 3 to burn the CD to long-term storage.
 4 Q. Got it. But from what you're saying, I take
 5 it the problem was caught and resolved before that
 6 problem actually eventually --
 7 A. Correct.
 8 Q. Okay. All right. Now, then I think you said
 9 that the PACS system would not properly present
 10 accession numbers in the HL-7 format?
 11 A. (Witness nods affirmatively.)
 12 Q. Can you tell me what that mean in laymen's
 13 terms?
 14 A. It all very complicated. I don't even think
 15 they have laymen's terms for this stuff.
 16 Q. Well, let me ask it a different way if that's
 17 a problem. That's fair enough.
 18 First of all, from the stand point of what you do
 19 as a doctor, what are these accession numbers, and why
 20 are they important to you?
 21 A. The accession numbers are unique numbers
 22 assigned for each exam, which is different from patient
 23 ID numbers that's assigned to each patient. For
 24 example, John Smith comes in on today for an exam. John
 25 Smith will have an ID number. He may have three

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1 different types of exams. For each different type of
 2 exam, it has its own unique accession number. John
 3 Smith may come back next week and have another exam. He
 4 will still have the same patient ID number. But any
 5 exams he has done will all have individual accession
 6 numbers generated for those exams. And that's important
 7 in the whole HL-7 interface.
 8 The HL-7 interface -- I didn't know anything about
 9 this prior to opening my imaging center, by the way. So
 10 this was an unpleasant, fast learning curve on all this
 11 computer stuff. The HL-7 interface is what industry
 12 standards use to transmit data between and amongst
 13 modalities and vendors. And there are all these
 14 specifications with all these different fields that the
 15 computer gurus from the various vendors have to match up
 16 in order for that information to transmit to what areas
 17 you're trying to get it to transmit. Whether it's the
 18 modality workstation, the PACS system, a billing system,
 19 Talk Technology system, HL-7 is involved in all of that.
 20 Q. Okay. So when you said that the PACS system
 21 wouldn't properly produce accession numbers in HL-7
 22 format, did it produce accession numbers in a different
 23 format?
 24 A. I think I probably misstated that in that --
 25 and again, I haven't reviewed this. So this is just all

Page 53

1 off of memory as to what happened back in December of
 2 2000. The RIS System produces the accession numbers.
 3 But there was some sort of problem between the modality
 4 and AGFA in transferring that information via HL-7. And
 5 I believe one of those factors was the accession number.
 6 I also believe that there were other factors, too, of
 7 which are just not popping up in my head right now.
 8 Q. Now, was that problem solved?
 9 A. Yes.
 10 Q. When was that problem solved?
 11 A. Before the deinstallation of the Toshiba
 12 equipment. But I can't give you specific dates. I'm
 13 sorry.
 14 Q. Well, if it was in -- if the equipment was
 15 installed in December, end of December 2000, was it
 16 solved within a month or a couple of months?
 17 A. I don't know that solved is the right word to
 18 use. But I think they fixed it to where it got me what
 19 I needed. And that was images on my PACS viewing
 20 station.
 21 Q. Okay. And was that done, you say, by what,
 22 the end of January?
 23 A. Yeah.
 24 Q. Okay.
 25 MR. BOYER: John, could we take a short

<p style="text-align: right;">Page 230</p> <p>1 Q. Okay. Anything else that you were -- 2 THE WITNESS: You want me to go back to 3 it?</p> <p>4 MR. TATE: Just answer what he asks you.</p> <p>5 Q. (BY MR. CHESNEY) Anything else in that 6 paragraph that you would take issue with, other than I 7 guess you're taking issue with the word instant in 8 telling us that it took too long, however, you can't say 9 how long.</p> <p>10 A. It wasn't instant access, as this paragraph 11 states.</p> <p>12 Q. Okay. Anything else?</p> <p>13 A. 000808, Patient Management: Individual 14 patient information can be entered at the time of the 15 examination, which is true, or an advance into an online 16 patient appointment file, which would have been our RIS 17 System, to make actual patient scanning proceed as 18 quickly as possible. And it could not do that. So it 19 could do this first part. It couldn't do the second 20 part.</p> <p>21 Q. Are you saying it couldn't do the second part 22 or it couldn't do it in conjunction with what you call 23 the RIS System?</p> <p>24 A. It could not do it in conjunction with our RIS 25 System.</p>	<p style="text-align: right;">Page 232</p> <p>1 off, why they dropped off, the ability to address that, 2 et cetera. And his system was not able to do that. So 3 as of April 1st, we switched to a medical manager 4 system.</p> <p>5 Q. Is that an online patient appointment system 6 or file?</p> <p>7 A. The --</p> <p>8 Q. The one you switched.</p> <p>9 A. -- Rad Pro?</p> <p>10 Q. Either of them.</p> <p>11 A. They're both online, what I consider online. 12 It's via HL-7 interface.</p> <p>13 Q. And does the Asteion work with the system you 14 currently have?</p> <p>15 A. I have no idea.</p> <p>16 Q. Okay. It doesn't say on Page 000808 it would 17 work for the RIS system, does it?</p> <p>18 A. That's what I understood as the online patient 19 appointment file.</p> <p>20 Q. It doesn't say the. It says an.</p> <p>21 A. All right. That's what I understood it as an 22 online patient appointment file.</p> <p>23 Q. Did you ever ask anyone at Toshiba if that's 24 what they understood by it?</p> <p>25 A. Not specifically.</p>
<p style="text-align: right;">Page 231</p> <p>1 Q. What was your RIS System?</p> <p>2 A. Rad Pro.</p> <p>3 Q. What is that?</p> <p>4 A. It is a radiology information system.</p> <p>5 Q. A recordkeeping system?</p> <p>6 A. It's where patient's name and information 7 related to the scan and the accession number and patient 8 ID number are entered in and transferred to the modality 9 via Worklist Management to access in order to start the 10 study on the patient.</p> <p>11 Q. Who sells the RIS system?</p> <p>12 A. We purchased it from a man named Bassell. 13 There's no way I could begin to spell or say his last 14 name. It starts with an N.</p> <p>15 Q. Okay.</p> <p>16 A. I can provide that information. But we no 17 longer use our RIS System.</p> <p>18 Q. Why not?</p> <p>19 A. Because it relates to problems with the 20 billing system and its inability to cross information 21 over to the billing system without duplication of entry 22 of the data, not being able to pull reports like you 23 guys are asking for. We need those own reports in order 24 to track utilization referring physicians, how many 25 studies they're sending of each modality, if they drop</p>	<p style="text-align: right;">Page 233</p> <p>1 Q. So what did they mean by an online patient 2 appointment file, if you know?</p> <p>3 A. I don't know.</p> <p>4 Q. Okay.</p> <p>5 A. If it doesn't mean my RIS System, I don't know 6 what it means.</p> <p>7 Q. Okay. Carry on.</p> <p>8 A. Refer to DDI 0001097. It's a brochure of a CT 9 scanner.</p> <p>10 Q. 1097 did you say?</p> <p>11 A. Yes. Networking and Service: Issues of 12 Utmost Importance. Advanced Network Communications.</p> <p>13 Q. Hang on one second because I think when Kyle 14 gave me these, he said they were broken up by modality. 15 I'm in the CT scanner one, but I don't think I have that 16 page. What is the page that immediately follows the one 17 you just --</p> <p>18 A. It's going in this whole set here.</p> <p>19 Q. Read me the number one more time.</p> <p>20 A. This begins this whole copy of the brochure.</p> <p>21 MR. TATE: 1097.</p> <p>22 A. And go about that far back (indicating).</p> <p>23 Q. 00?</p> <p>24 MS. PECK: 1097.</p> <p>25 A. And this is what it looks like (indicating).</p>

13:221 IN THE UNITED STATES DISTRICT COURT
13:222 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

13:223 DELAGE LANDEN FINANCIAL SERVICES,)
13:224 INC,)
13:224 PLAINTIFF,)
13:225 TOSHIBA AMERICA MEDICAL SYSTEMS,)
13:226 INC.,)
13:227 PLAINTIFF/INTERVENOR,)
13:228 VS.) 2-02CV2810
13:229) VOLUME IV
13:220 DESOTO DIAGNOSTIC IMAGING, LLC,)
RANDON J. CARVEL, LYNN T. CARVEL,)
13:221 DELTA RADIOLOGY, PC, AND ZOBAR)
PROPERTIES, LLC,)
13:222 DEFENDANTS.)
13:223

13:224 DEPOSITION
13:225

13:226 OF
13:227 LYNN T. CARVEL, M.D.

13:228
13:229 RULE 30 (B) (6) TESTIMONY

13:220 SEPTEMBER 9, 2003
13:221

13:222

13:223 ALPHA REPORTING CORPORATION
KORIAN NEAL, RPR, CCR
13:224 100 North Main Building, The Lobby
Memphis, Tennessee 38103
13:225 (901) 523-8974

ALPHA REPORTING CORPORATION
(901) 523-8974

Page 2		Page 4	
13:221	The deposition of LYNN T. CARVEL, M.D.,	13:221	INDEX
13:222	is taken on this the 9th day of September, 2003, on	13:222	Witness (LYNN T. CARVEL, M.D.)
13:223	behalf of the Plaintiff/Intervenor, pursuant to notice	13:223	Page 5 Direct Examination by Mr. Chesney.....05
13:224	and consent of counsel, beginning at approximately	13:224	Cross-Examination by Mr. Gaier.....193
13:225	9:15 a.m. in the offices of Baker, Donelson, Bearman,	13:225	Redirect Examination by Mr. Chesney.....196
13:226	Caldwell, & Berkowitz, 19th Floor, 165 Madison Avenue	13:226	
13:227	Memphis, Tennessee.	13:227	
13:228	This deposition is taken pursuant to the	13:228	
13:229	terms and provisions of the Federal Rules of Civil	13:229	
13:220	Procedure.	13:220	
13:221	All forms and formalities are waived, and	13:221	EXHIBITS
13:222	objections alone as to relevancy, materiality and	13:222	* * * * NO EXHIBITS MARKED * * * *
13:223	competency are reserved, to be presented at or before	13:223	
13:224	the hearing. Objections as to the form of the	13:224	
13:225	question must be made at the time of the taking of the	13:225	
13:226	deposition. The signature of the witness is not	13:226	
13:227	waived.	13:227	
18		13:228	
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<p style="text-align: right;">Page 158</p> <p>14:301 damage?</p> <p>14:302 A. I don't think we mentioned, or I mentioned, 14:303 the loss in income due to it taking longer to perform 14:304 various types of exams, in particular, MRI and nuc med 14:305 studies, of which it wouldn't have taken had the 14:306 equipment been functioning like it was supposed to, 14:307 which kept me from being able to schedule more patients 14:318 during the same time period.</p> <p>14:319 Q. So are you saying you had to turn down 14:320 referrals as a result of the nuclear medicine equipment 14:321 or the MR equipment functioning more slowly than you 14:322 would have liked it to perform?</p> <p>14:313 A. I potentially had to turn down referrals for 14:314 not being able to get them in when they wanted to come. 14:315 I lost some patients who we were in the process of 14:316 scanning and got so frustrated and disgusted with the 14:317 situation that they then left and didn't come back. And 14:318 I lost referrals due to the length of time that it took 14:319 and those patients going back to their referring 14:320 physicians complaining about what happened.</p> <p>14:321 Q. Okay.</p> <p>14:322 MR. CHESNEY: Could you read me back the 14:323 witness' answer? I want to make sure I've got all the 14:324 categories.</p> <p>14:325 (WHEREUPON, THE LAST ANSWER WAS READ</p> <p style="text-align: center;">ALPHA REPORTING CORPORATION (901) 523-8974</p>	<p style="text-align: right;">Page 160</p> <p>14:331 different question.</p> <p>14:332 MR. TATE: Oh, okay.</p> <p>14:333 Q. (BY MR. CHESNEY) My question is, can we agree 14:334 that we would need to know what the cause of the 14:335 slowness in scanning was in order to determine where the 14:336 blame should be placed for any loss of patients related 14:347 to that?</p> <p>14:348 A. Well, I know the answer to why it occurred.</p> <p>14:349 So if you're wanting me to agree with you that you don't 14:350 know the answer to it, then I'll be happy to agree with 14:351 that.</p> <p>14:342 MR. CHESNEY: The witness appears to be 14:343 befuddled by a simple question. I'll ask the court 14:344 reporter to read it back to her.</p> <p>14:345 (WHEREUPON, THE LAST QUESTION WAS READ 14:346 BACK BY THE COURT REPORTER.)</p> <p>14:347 MR. TATE: I'll object to the form of the 14:348 question. The contentions in the lawsuit make it 14:349 clear who's to blame.</p> <p>14:350 Q. (BY MR. CHESNEY) Answer the question, please, 14:351 Dr. Carvel.</p> <p>14:352 A. No. I can't agree with you that we first have 14:353 to determine who's to blame because I already feel like 14:354 I know who's to blame.</p> <p>14:355 Q. So do we.</p> <p style="text-align: center;">ALPHA REPORTING CORPORATION (901) 523-8974</p>
<p style="text-align: right;">Page 159</p> <p>14:321 BACK BY THE COURT REPORTER.)</p> <p>14:322 Q. (BY MR. CHESNEY) Okay. First of all, you say 14:323 you potentially lost patients due to being unable to 14:324 schedule them the way you would like to. Did you 14:325 actually lose any as a result of that, if you know?</p> <p>14:326 A. I don't know.</p> <p>14:327 Q. Okay. Next one you say you lost patients who 14:328 got so disgusted in the process of scanning that they 14:329 didn't come back; right?</p> <p>14:330 A. Right.</p> <p>14:331 Q. And that's people who -- are you saying people 14:332 did not even stay to have their scans completed?</p> <p>14:333 A. Right.</p> <p>14:334 Q. Okay. And I guess what we would have to know 14:335 in order to figure out where to place the blame for that 14:336 problem, we'd have to know why it was that the scans 14:337 were taking so long; correct?</p> <p>14:338 A. Oh. I already know the answer to that.</p> <p>14:339 Q. I doubt it. But we'd agree that we'd have to 14:340 know the answer to that. Can we agree that much?</p> <p>14:341 MR. TATE: I believe she's already 14:342 testified, John, that she knows the answer to it. And 14:343 I think you testified that you doubt it. So are y'all 14:344 arguing here today or what?</p> <p>14:355 MR. CHESNEY: Not at all. I'm asking a</p> <p style="text-align: center;">ALPHA REPORTING CORPORATION (901) 523-8974</p>	<p style="text-align: right;">Page 161</p> <p>14:351 A. So we don't have to first determine who's to 14:352 blame because I already know.</p> <p>14:353 Q. I didn't ask you that, did I? I said, we 14:354 would have to know who's to blame.</p> <p>14:355 A. Well, I know who's to blame.</p> <p>14:356 Q. I disagree with you.</p> <p>14:357 A. So there's no we about it.</p> <p>14:358 MR. TATE: Well, good thing you're not a 14:359 witness, John. You're the lawyer. Or are you a 14:360 witness?</p> <p>14:351 Q. (BY MR. CHESNEY) Do you agree with me that in 14:352 order to know who would be responsible for the loss of 14:353 patients in this situation, we would first have to know 14:354 what the reason was for the scans having taken longer 14:355 than the patient was willing to tolerate?</p> <p>14:356 A. Yes.</p> <p>14:357 Q. Thank you very much. I knew you'd get that 14:358 eventually. Now, you say you know what the blame was or 14:369 what the cause was; right?</p> <p>14:360 A. Correct.</p> <p>14:361 Q. Okay. How many instances of this occurred?</p> <p>14:362 A. I'm not sure.</p> <p>14:363 Q. What are the names of the patients ever?</p> <p>14:364 A. I just said I wasn't sure.</p> <p>14:365 Q. What were the types of scans being performed?</p> <p style="text-align: center;">ALPHA REPORTING CORPORATION (901) 523-8974</p>

<p style="text-align: right;">Page 162</p> <p>14:361 A. I'll have to look all this up and see what I 14:362 can get back to you.</p> <p>14:363 Q. You don't know?</p> <p>14:364 A. Sitting here today?</p> <p>14:365 Q. Yes.</p> <p>14:366 A. No.</p> <p>14:367 Q. Okay. What was the cause of the delay in the 14:368 scanning process specifically with regard to each 14:369 patient?</p> <p>14:370 A. Well, I can go through all of these documents here that list all the different problems that occurred 14:371 with the MRI. And those would all be attributable to 14:372 delayed scanning time with the patients. So if you'd 14:373 like for me to do that, I'll be happy to.</p> <p>14:374 Q. I just want anything you can tell me right now 14:375 without reading documents. You told me you know what the cause was. Tell me what the cause was.</p> <p>14:376 A. There were persistent RF errors that required 14:377 the rebooting of the system, which caused scrolling to 14:378 occur either while the patient was being scanned or 14:379 before the patient being scanned, which aborted the 14:380 scan, and the scan had to be started all over again, 14:381 further delaying time. There were poor fat saturation 14:382 studies producing poor image quality in which sequences 14:383 had to be repeated. There were problems with the table</p> <p style="text-align: center;">ALPHA REPORTING CORPORATION (901) 523-8974</p>	<p style="text-align: right;">Page 164</p> <p>14:391 look at documents. I'm asking for your unrefreshed 14:392 recollection, which I'm entitled to test the credibility 14:393 of your testimony. What are you looking at? Is there 14:394 anything else you can add without looking at documents 14:395 Let me ask you that.</p> <p>14:396 A. As long as I'm at some point allowed the 14:397 option to look at my documents. Whether I remember 14:398 everything off the top of my head over 15 months of 14:399 problems that occurred has no bearing on the credibility 14:400 of my testimony here.</p> <p>14:401 Q. Is there anything else you can remember 14:402 without looking at documents? That's all I'm asking.</p> <p>14:403 A. I can remember coils having to be replaced, 14:404 CTL coils, head coil. Because the field engineer rubbed 14:405 baby oil on it and subsequently produced artifacts --</p> <p>14:406 Q. Excuse me. Excuse me.</p> <p>14:407 A. -- on images. Don't interrupt me while I'm 14:408 answering your question.</p> <p>14:409 Q. Well, forgive me.</p> <p>14:410 MR. TATE: Well, John, we won't forgive 14:411 you right now. Let her finish.</p> <p>14:412 MR. CHESNEY: I just want to make sure 14:413 we're on track here.</p> <p>14:414 THE WITNESS: No. I am not going to let 14:415 you --</p> <p style="text-align: center;">ALPHA REPORTING CORPORATION (901) 523-8974</p>
<p style="text-align: right;">Page 163</p> <p>14:371 as far as moving it in and out of the gantry. There was 14:372 a problem with a piece of the MRI coming off with the 14:373 patient as they were being pulled out. There were 14:384 problems tuning the magnet.</p> <p>14:385 There were a variety of artifacts including the 14:386 white dot artifact, the -- I'm trying to remember 14:387 the specific names of these variety of artifacts that 14:388 occurred which required repeating the sequences on these 14:389 patients.</p> <p>14:390 I can sit here and continue without looking at my 14:391 documents trying to remember all these things if you'd 14:392 like for me to.</p> <p>14:393 Q. You told me you knew what the cause was. I 14:394 want to hear what you know.</p> <p>14:395 A. Well, if you want a full and complete, honest 14:396 answer, then I need to look at the information.</p> <p>14:397 Q. No. Just tell me what you know. You said 14:398 you --</p> <p>14:399 MR. TATE: You can give him a full and 14:400 complete answer by looking at what you need to look 14:401 to.</p> <p>14:402 Q. (BY MR. CHESNEY) Dr. Carvel --</p> <p>14:403 MR. TATE: If he doesn't want to hear it, 14:404 then so be it.</p> <p>14:405 Q. (BY MR. CHESNEY) Dr. Carvel, please don't</p> <p style="text-align: center;">ALPHA REPORTING CORPORATION (901) 523-8974</p>	<p style="text-align: right;">Page 165</p> <p>14:401 MR. TATE: We're on track here. John --</p> <p>14:402 MR. CHESNEY: We are --</p> <p>14:403 MR. TATE: No. Real clear. She's going 14:404 to finish. You be quiet, and let her answer the 14:405 question.</p> <p>14:406 A. I am totally focused. You want to know what 14:417 happened without me being able to look at my documents 14:418 that caused the increased scan time of my patients in 14:419 MRI.</p> <p>14:420 Q. (BY MR. CHESNEY) That caused those 14:421 patients --</p> <p>14:422 A. And I'm continuing to go through these 14:423 accounts without looking at my records. So I'm going to 14:424 continue to answer that question.</p> <p>14:425 MR. TATE: You're going to sit there and 14:426 let her answer.</p> <p>14:427 Q. (BY MR. CHESNEY) Are we focused, Dr. Carvel 14:428 on those patients who actually left in the middle 14:429 because that was my original question. Or are you just 14:430 talking on and on about things that you believe delayed 14:431 scan time generally?</p> <p>14:432 A. No. I'm focusing on things that actually 14:433 caused the patients to leave.</p> <p>14:434 Q. Okay. And not come back?</p> <p>14:435 A. And not come back.</p> <p style="text-align: center;">ALPHA REPORTING CORPORATION (901) 523-8974</p>

<p style="text-align: right;">Page 166</p> <p>14:411 Q. Carry on. That's fine. 14:412 MR. CHESNEY: I just want to make sure 14:413 she's focused. 14:414 MR. TATE: You just want to interrupt her 14:415 is what you want to do. 14:416 MR. CHESNEY: Not at all. 14:417 Q. (BY MR. CHESNEY) Go ahead, Dr. Carvel. 14:418 MR. TATE: You want to read back her last 14:419 answer? 14:420 (WHEREUPON, THE LAST ANSWER WAS READ 14:421 BACK BY THE COURT REPORTER.) 14:422 A. That's all I can recall without looking at any 14:423 of my notes at this time. 14:424 Q. (BY MR. CHESNEY) That's fine. Can you 14:425 identify any patients who left in the middle of an exam 14:426 that didn't come back. 14:427 A. Not right now, I can't. I'll be happy to 14:428 provide you with that information if I can find it. 14:429 Q. How would we go about trying to identify those 14:430 patients? 14:431 A. When I get back, I'll try to identify them the 14:432 best I can. 14:433 Q. Right. I'm asking you how would we go about 14:434 trying to identify them? 14:435 A. How will you go about it? Well, I guess</p> <p style="text-align: center;">ALPHA REPORTING CORPORATION (901) 523-8974</p>	<p style="text-align: right;">Page 168</p> <p>14:451 coded to an incomplete scan when it was billed. 14:452 Q. Now, the billing information hasn't been 14:453 provided yet. That's the billing information that's on 14:454 the RIS system? 14:455 A. There is no billing information on the RIS 14:456 system, as I've previously testified to. It's the 14:457 billing information on the billing system. 14:458 Q. Okay. Is that hard copy information or 14:459 computerized information? 14:460 A. Hard copy information. Remember, I told you 14:461 I'd have to print out every single patient's -- I'm 14:462 trying to think of what they're called -- account 14:463 information from our billing system, of which I have 14:464 done. 14:465 Q. You have done that? 14:466 A. Yes. 14:467 MR. CHESNEY: We haven't received it. 14:468 MR. TATE: You will when you leave. The 14:469 courier will be bringing it here at 5:00 o'clock. 14:470 MR. CHESNEY: Bringing it here? 14:471 MR. TATE: Yeah. For you to take. 14:472 MR. CHESNEY: How voluminous is it? 14:473 MR. TATE: I don't know. Good luck. 14:474 MR. CHESNEY: Off the record. 14:475 (SHORT BREAK)</p> <p style="text-align: center;">ALPHA REPORTING CORPORATION (901) 523-8974</p>
<p style="text-align: right;">Page 167</p> <p>14:431 you'll have to wait for me to get back and look through 14:432 my stuff to see if I can then provide them for you. 14:433 Q. Maybe I will, and maybe I won't. But here's 14:434 my question: What stuff, as you put it in your answer, 14:435 exists at DDI that you would be able to look through 14:436 that you believe would give you a reasonable likelihood 14:437 of identifying the patients in question? 14:448 A. The same stuff that's already been disclosed 14:449 to you regarding patient imaging, manuals, any other 14:450 documentation that's been turned over to you or that I 14:451 can find that hadn't been turned over to you and 14:452 subsequently will be. 14:443 Q. How would the documentation that you believe 14:444 has been turned over to us help us identify patients 14:445 whose scans were not completed, who left the facility 14:446 and didn't come back? Where would we look to find that 14:447 information? 14:448 A. In the logbooks. There may be notations. 14:449 There may be incomplete studies that are on all of those 14:450 CDs that we burned for you. So if you want to start 14:451 looking in there, you can. 14:442 Q. Anywhere else? 14:443 A. Possibly in the -- all of the billing 14:454 information which we have for you in which we were not 14:455 able to charge for a complete scan and it had to be down</p> <p style="text-align: center;">ALPHA REPORTING CORPORATION (901) 523-8974</p>	<p style="text-align: right;">Page 169</p> <p>14:581 Q. (BY MR. CHESNEY) I think you told me what you 14:582 could without looking at documents relating to the loss 14:583 of patients as a result of people leaving before scans 14:584 were completed. The other category you mentioned was 14:585 that there were patients who complained to their doctors 14:586 about the length of time the scans had taken and the 14:587 result was in your view that you therefore lost 14:588 referrals. Is that correct? 14:589 A. Yeah. But I'm sorry. I was just thinking 14:590 about what we just finished talking about. And I 14:591 thought that was the billing. 14:582 Q. Oh, I'm sorry. No. We talked about the 14:583 billing records in the context of how would we go about 14:584 trying to figure it out. 14:585 A. Oh, okay. So we're finished with that one; 14:586 right. 14:587 Q. Yeah. We're going to go back to it because 14:588 you may have been out of the room when Mr. Tate and I 14:589 were talking about it. 14:590 A. Yeah, I was. 14:591 Q. But we'll talk about the billing records in a 14:592 different context in hopefully about two minutes. We'll 14:593 see. 14:594 But now I want to talk to you about the last 14:595 subcategory, if you will, of the loss in income that you</p> <p style="text-align: center;">ALPHA REPORTING CORPORATION (901) 523-8974</p>

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14:591 referred to as resulting from slow scanning on the
 14:592 nuclear medicine camera and the MRI. Okay?
 14:593 A. Okay.
 14:594 Q. And that subcategory was, I believe, related
 14:595 to the fact that you felt due to the length of time it
 14:596 took to complete scans, patients went back to their
 14:597 doctors complaining, and the doctors either ceased
 14:598 referring patients to you or reduced the number of
 14:599 referrals; is that correct?
 14:600 A. Correct.
 14:601 Q. Okay. Now, tell me what you can about that
 14:602 last subcategory of damages.
 14:603 A. I can't tell you anything with specificity
 14:604 right now without going back to my records.
 14:605 Q. Well, can you identify any patient who
 15:006 actually did that, to your knowledge?
 15:007 A. Not off the top of my head. I can remember a
 15:008 physician who told me that the patient had come back and
 15:009 done that, had complained.
 15:000 Q. And who was that?
 15:001 A. Dr. Gina Bray.
 15:002 Q. How do you spell that?
 15:003 A. Last name is B-R-A-Y, first name Gina,
 15:004 G-I-N-A.
 15:005 Q. And did Dr. Bray stop referring patients to

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15:021 to this law firm this evening but probably too late for
 15:022 any questioning in your deposition today billing records
 15:023 relating to DDI's facility; correct?
 15:024 A. That's what I understand, too.
 15:025 Q. Now therefore, I want to ask you, since we
 15:026 will not have the opportunity to ask you specific
 15:027 questions about the specific billing records today, just
 15:028 a few questions about what those records are, what they
 15:029 reflect and so forth, so that as we read them when we
 15:030 get them, we will have a better ability to understand
 15:031 what they're all about. Fair enough?
 15:032 A. Sure.
 15:033 Q. First of all, tell me what do you call the
 15:034 records that we're going to receive later today?
 15:035 A. In general terms, billing records or records
 15:036 off of our -- patients' account records off of our
 15:037 billing system.
 15:038 Q. Does each patient account have a separate
 15:039 document that reflects the billing records for that
 15:040 patient?
 15:041 A. Yes.
 15:042 Q. Are all of the billing --
 15:043 A. Wait. Say that again. I'm sorry. Does each
 15:044 patient's account have a separate record?
 15:045 Q. Yes.

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15:001 you as a result?
 15:002 A. I don't believe so.
 15:003 Q. Okay. Are you aware of any physician who
 15:004 stopped referring patients to you as a result of their
 15:005 patient allegedly stating that the scans at your
 15:006 facility took too long?
 15:017 A. There again, there's somebody on the tip of my
 15:018 tongue as far as physician wise that did tell me that
 15:019 and then subsequently I saw a decrease in referrals.
 15:020 But I'm not able to recall right now and may be able to
 15:021 once I go back and further investigate it.
 15:022 Q. Any other information you can provide on that
 15:023 subject?
 15:024 A. Not right now.
 15:025 Q. Okay. Any other items of damage that have
 15:026 come to your mind as we've been talking today?
 15:027 A. Not that I can think of.
 15:028 Q. Okay. Both off and on the record we talked a
 15:029 little bit about what I think I may have called billing
 15:030 records and you may have called account records. You
 15:031 recall that a few minutes ago?
 15:032 A. I think I call them billing records, too. But
 15:033 yeah. I agree we were talking about the same subject.
 15:024 Q. And I understand from your counsel, Mr. Tate,
 15:025 that you have copied and will be delivering I guess here

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15:031 A. Yes. It's all listed printed out one patient
 15:032 at a time. I don't know whether it's on one patient per
 15:043 one page or if it carries over. But it would not be
 15:044 intermingled. One patient's information would not be
 15:045 intermingled with another patient's information. It
 15:046 would be that patient's account for all studies that
 15:047 they had during the time period that we were open and
 15:048 using this billing system.
 15:049 MR. TATE: You want me to clarify for
 15:050 you?
 15:041 MR. CHESNEY: Yeah. Why don't you
 15:042 clarify.
 15:043 MR. TATE: Just if you don't mind. I
 15:044 don't think there's one sheet for one patient.
 15:045 THE WITNESS: Right.
 15:046 MR. TATE: I think it's going to run.
 15:047 Wherever the patient's information stops, the next
 15:048 patient would pick up.
 15:049 Q. (BY MR. CHESNEY) But if new information --
 15:050 let's say you got patient one and two. Patient one's
 15:051 information ends and begins in the middle of the page.
 15:052 If there were a new billing entry for that patient, it
 15:053 would go at the end of patient one, and patient two's
 15:054 record would move down a line or two of type? Is that
 15:055 basically how it works?

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Exhibit M

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3 DELAGE LANDEN FINANCIAL SERVICES,)
4 INC,)
5 PLAINTIFF,)
6 TOSHIBA AMERICA MEDICAL SYSTEMS,)
7 INC.,)
8 PLAINTIFF/INTERVENOR,)
9 VS.) 2-02CV2810
10 DESOTO DIAGNOSTIC IMAGING, LLC,)
11 RANDON J. CARVEL, LYNN T. CARVEL,)
12 DELTA RADIOLOGY, PC, AND ZOBAR)
PROPERTIES, LLC,)
12 DEFENDANTS.)

VIDEO DEPOSITION

OF

MAY KILLEBREW VOKATY

AUGUST 12, 2003

COPY

ALPHA REPORTING CORPORATION

KORIAN NEAL, RPR, CCR

100 North Main Building, The Lobby
Memphis, Tennessee 38103

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Page 2

1 The video deposition of MAY KILLEBREW
2 VOKATY, IS taken on this, the 12th day of August,
3 2003, on behalf of the Plaintiff/Intervenor, pursuant
4 to notice and consent of counsel, beginning at
5 approximately 9:20 a.m. in the offices of Baker,
6 Donelson, Bearman, Caldwell, & Berkowitz, 19th Floor,
7 165 Madison Avenue, Memphis, Tennessee.

8 This deposition is taken pursuant to the
9 terms and provisions of the Federal Rules of Civil
10 Procedure.

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YPOG

Page 3

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19

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1 A. (Witness nods affirmatively.)

2 Q. Okay. Apparently, when these interrogatories
3 were answered, people didn't think that Cindy operated
4 the nuclear camera. But you believe she did at least on
5 occasions?

6 A. Yes, I do.

7 Q. Okay. Do you know if she ever received any
8 training on how to operate the camera?

9 A. I don't know.

10 Q. You had mentioned, incidentally, that you had
11 received some kind of training or instruction or
12 something from a guy called Jim Smith?

13 A. Yes.

14 Q. Okay. Can you tell me what it was that
15 Mr. Smith did by way of giving you training or
16 instruction or both, whatever he did?

17 A. He gave me a manual, a step-by-step
18 instruction, to refer to if I needed it.

19 Q. Was that a Toshiba manual?

20 A. No.

21 Q. What manual was that?

22 A. It didn't really have a name. It was just
23 help if I needed it for nuclear medicine. It
24 encompassed more than just the Toshiba. It included hot
25 lab work and recordkeeping.

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1 Q. But it was focused on nuclear medicine;
2 correct?

3 A. Yes, it was.

4 Q. When you say recordkeeping, what do you mean
5 by recordkeeping as it would relate to nuclear medicine?

6 A. Well, when radioactive isotopes come into our
7 building, we have to keep careful records to make sure
8 they're not misused. So we recorded every isotope that
9 comes in the building, at what time it gets there, what
10 time we assay it or measure it, and what time we inject
11 the patient.

12 Q. Okay. Do you still have this manual that
13 Mr. Smith gave you?

14 A. I do not.

15 Q. Why not?

16 A. Someone took it.

17 Q. Who took it?

18 A. I don't know.

19 Q. When did you last have it?

20 A. February 2002.

21 Q. You don't know who took it, though?

22 A. No.

23 Q. Okay. You mentioned Cindy Holmes as having
24 operated the nuclear camera. How frequently did she
25 operate it?